



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: County Counsel
Department No.: 0710
For Agenda Of: 03/24/2009
Placement: Administrative
Estimated Time: 5 minutes
Continued Item:
If Yes, date from:
Vote Required: 4/5

0324.26 09.00265

TO: Board of Supervisors
FROM: County Counsel Dennis A. Marshall x 2950
Scott McGolpin, Dept. Public Works
Contact Info: Marie A. LaSala, Deputy County Counsel
SUBJECT: Contract with the law firms of Adamski, Moroski Madden & Green and Ellison Schneider & Harris

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

Approve and authorize the attached contract with the law firms of Adamski, Moroski Madden & Green, LLP and Ellison Schneider & Harris, LLP to develop a multi-jurisdictional Joint Powers Agreement between the County of Santa Barbara, the City of Goleta, the City of Buellton, the City of Solvang and the City of Santa Barbara and draft a Request for Proposal for the financing, permitting, design, construction and operation of a conversion technology facility at the Tajigaus Landfill.

Summary Text:

Board of Supervisors, under the provisions of Section 31000 of the California Government Code, is empowered to contract for special legal services. Due to the specialized nature of the issues presented, it is most efficient for County Counsel to seek the assistance of Raymond A. Biering of Adamski, Moroski Madden & Green, an attorney with extensive experience representing public entities in the fields of solid waste law, air pollution law, and complex contract negotiations and Ellison Schneider & Harris, a law firm with extensive experience in the areas of large energy and related facility design, siting, financing and permitings. Legal fees to complete this work are estimated at \$75,000. The attached contract is therefore limited to a total amount \$75,000.

The Resource, Recovery and Waste Management Division of the Public Works Department has included the costs for this contract in its budget for this fiscal year.

Background:

The conversion technology facility to be established at the Tajiguas Landfill is part of the Department of Public Works' long-term commitment to seeking alternatives to traditional landfill disposal of our community's solid waste. Conversion technology offers many other potential benefits for the County of Santa Barbara including environmental mitigation of waste disposal impacts, the production of green energy and a significant increase in solid waste diversion (currently at 69%).

The current plan for the ownership, operation, financing and contract administration of this potential facility is as follows:

- Ownership of the proposed CT facility will be a public-private hybrid.
- The facility will be privately designed, built, owned and operated during the contract, but will allow the participating public jurisdictions to purchase the facility for a nominal fee at the end of the contract.
- Due to initial private ownership, this project will be privately financed. This will reduce the financial risk of this project to the County of Santa Barbara and increase scrutiny from private lenders to ensure viability.

Performance Measure:

This contract for outside counsel will support the County's efforts to mitigate waste disposal impacts by increasing solid waste diversion and producing green energy.

Payment for legal services and/or reimbursement costs shall be made upon the contractor's satisfactory performance, based on the scope and methodology contained in EXHIBIT A of the contract as determined by County staff.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
General Fund			
State			
Federal			
Fees			
Other:			
Total	\$ -	\$ -	\$ -

Narrative:

Staffing Impacts:

Legal Positions:
0

FTEs:
0

Special Instructions:

Please send two (2) fully executed originals of the contract and one (1) minute order to Marie A. LaSala, Deputy County Counsel, Room 201.

Attachments: Contract with Adamski, Moroski Madden & Green, LLP and Ellison Schneider & Harris, LLP

Authored by: Marie LaSala, Deputy County Counsel x2980

cc: Mark Schleich, Director RRWM
Bob Geis, Auditor

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 (hereinafter COUNTY) and Raymond A. Biering, Esq., *Of Counsel*, for the law firm of Adamski, Moroski Madden & Green, LLP, having its principal place of business at 6633 Bay Laurel Place, Avila Beach, CA 93424 and Ellison Schneider & Harris, LLP, having its principal place of business at 2600 Capitol Avenue, Suite 400, Sacramento, CA 95816-5905 (hereinafter ATTORNIES) wherein ATTORNIES agree to provide and COUNTY agrees to accept the services specified herein.

RECITALS

WHEREAS, COUNTY requires advice and representation by private legal counsel regarding a multi-jurisdictional Joint Powers Agreement, Request for Proposal for the financing, permitting, design, construction and operation of a conversion technology facility at the Tajigaus Landfill;

WHEREAS, COUNTY's Board of Supervisors, under the provisions of Section 31000 of the California Government Code, is empowered to contract for special legal services; and,

WHEREAS, ATTORNIES are specially trained, skilled, experienced, and competent to perform the special legal services required by the COUNTY and the COUNTY desires to retain the services of ATTORNIES pursuant to the terms covenants, and conditions hereinafter set forth;

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

1. **DESIGNATED REPRESENTATIVE.** Deputy County Counsel Marie LaSala at phone number 805-568-2980 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Raymond A. Biering at phone number 805-543-0990 is the authorized representative for ATTORNIES. 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 first class mail, postage prepaid, or otherwise delivered as agreed upon by the parties, as follows:

To COUNTY: Marie A. LaSala, Deputy County Counsel
Office of County Counsel
County of Santa Barbara
105 East Anapamu Street # 201
Santa Barbara, California, 93101

To ATTORNIES: Raymond A. Biering, Esq,
Of Counsel
Adamski Moroski Madden & Green, LLP
P.O. Box 3835
San Luis Obispo, CA 93403-3835

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

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

4. **TERM.** ATTORNIES shall commence performance on March 17, 2009 and end performance upon completion, but no later than December 31, 2009 unless otherwise directed by COUNTY or unless earlier terminated.

5. **COMPENSATION OF ATTORNIES.** ATTORNIES shall be paid for performance under this Agreement in an amount not to exceed \$75,000 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 B.** Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. **INDEPENDENT CONTRACTOR.** ATTORNIES shall perform all of their services under this Agreement as an independent contractor and not as an employee of COUNTY. ATTORNIES understand and acknowledge that they 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.

7. **STANDARD OF PERFORMANCE.** ATTORNIES represents that they have the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, ATTORNIES shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which ATTORNIES is engaged. All products of whatsoever nature, which ATTORNIES deliver 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 ATTORNIES' profession. ATTORNIES shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by ATTORNIES without additional compensation.

8. **TAXES.** COUNTY shall not be responsible for paying any taxes on ATTORNIES' behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, ATTORNIES agree 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.

9. **CONFLICT OF INTEREST.** ATTORNIES covenant that ATTORNIES presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. ATTORNIES further covenant that in the performance of this Agreement, no person having any such interest shall be employed by ATTORNIES. ATTORNIES have conducted a conflicts evaluation and has discovered no potential conflicts, other than those disclosed to COUNTY prior to this Agreement. ATTORNIES shall inform COUNTY immediately of any potential ethical issues or conflicts that may arise in the course of ATTORNIES' representation of the COUNTY in this matter or at any time in the future, as soon as such an issue or conflict becomes known.

10. **EXPERTS/CONSULTANTS.** ATTORNIES shall get COUNTY's approval prior to retaining any expert or consultant to assist with any matter covered by this Agreement.

11. **OWNERSHIP OF DOCUMENTS.** 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, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. ATTORNIES shall not release any materials under this section except after prior written approval of COUNTY.

No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of COUNTY. COUNTY shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

12. **RECORDS, AUDIT, AND REVIEW.** ATTORNIES shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner in ATTORNIES' 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 ATTORNIES' regular business hours or upon reasonable notice.

13. **INDEMNIFICATION AND INSURANCE.** ATTORNIES shall agree 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.

14. **NONDISCRIMINATION.** COUNTY hereby notifies ATTORNIES 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 ATTORNIES agree to comply with said ordinance.

15. **NONEXCLUSIVE AGREEMENT.** ATTORNIES understand 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 ATTORNIES as the COUNTY desires.

16. **ASSIGNMENT.** ATTORNIES shall not assign any of their rights nor transfer any of their obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

17. **TERMINATION.**

A. **By COUNTY.** COUNTY may, by written notice to ATTORNIES, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience or because of the failure of ATTORNIES to fulfill the obligations herein. Upon receipt of notice, ATTORNIES shall immediately discontinue all services affected (unless the notice directs otherwise), and deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by ATTORNIES in performing this Agreement, whether completed or in process.

1. For Convenience. COUNTY may terminate this Agreement upon thirty (30) days written notice.

COUNTY shall pay ATTORNIES for service 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 ATTORNIES be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. ATTORNIES 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 ATTORNIES. In the event of a dispute as to the reasonable value of the services rendered by ATTORNIES, 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.

2. **For Cause.** Should ATTORNIES default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate this Agreement by written notice, which shall be effective upon receipt by ATTORNIES.

B. **By ATTORNIES.** Should COUNTY fail to pay ATTORNIES all or any part of the payment set forth in EXHIBIT B, ATTORNIES may, at ATTORNIES' 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.

18. **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.

19. **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.

20. **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.

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

22. **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.

23. **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.

24. **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.

25. **COMPLIANCE WITH LAW.** ATTORNIES shall, at their 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 ATTORNIES in any action or proceeding against ATTORNIES, whether COUNTY is a party thereto or not, that ATTORNIES have violated any such ordinance or statute, shall be conclusive of that fact as between ATTORNIES and COUNTY.

26. **CALIFORNIA LAW.** 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.

27. **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.

28. **AUTHORITY.** All 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, ATTORNIES hereby warrant that it shall not have breached the terms or conditions of any other contract or agreement to which ATTORNIES are obligated, which breach would have a material effect hereon.

29. **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.

Agreement for Professional Legal Services between the County of Santa Barbara and Adamski Moroski Madden & Green, LLP and Ellison, Schneider & Harris, LLP

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

By: _____
Deputy

Adamski Moroski Madden & Green, LLP

ATTORNEY

Ellison, Schneider & Harris, LLP

ATTORNEY

By: _____
Soc Sec or Tax ID Number: _____

By: _____
Soc Sec or Tax ID Number: _____

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

EXHIBIT A

STATEMENT OF WORK

- *Participate in meetings of the project team to discuss and review issues of strategic importance, including procurement practice (i.e., conformance to State, City and County procurement requirements), procurement approach, roles and responsibilities of contracting parties, permitting approach, interrelationship with other interested public jurisdictions, other applicable law considerations and requirements, process and evaluation criteria for Proposal review, etc.*

Raymond A. Biering would participate in all project team meetings either personally or telephonically, depending on the meeting date. He would be prepared to provide all legal support necessary for the RFP preparation, strategy, and circulation process, the intergovernmental issues necessary to achieve a workable JPA, and all other needs of the project team members.

- *Preparation of Section 5 of the RFP, Terms and Conditions of Contract (Contract Principles) the Public Entities' consultant, Alternative Resources Incorporated (ARI), can provide examples of other RFPs.*

Douglas K. Kerner and Brian S. Biering would prepare Section 5 of the RFP and all other legal terms and conditions of the RFP and proposed contract. Assuming, ARI provides samples of similar RFPs and based on the contracts already available to the project team, the overall contract and RFP drafting time can be limited.

- *Preparation of Proposal Forms, as appropriate, including Form of Bid Bond, Performance Bonds, Corporate Guarantee, and Disclosure Statements. ARI to provide examples from other RFPs.*

Douglas K. Kerner and Brian S. Biering would prepare the proposal forms, forms of bid bonds, performance bonds, corporate guarantees, and disclosure statements based on examples provided by ARI, as well as from other exemplars available to the legal team from comparable California public projects.

- *Research issues related to the permitting approach, including a determination if County DPW can serve as lead agency for the CEQA process under DBOOT project delivery.*

The team members would provide all necessary legal research related to permitting, CEQA, APCD and other issues.

- *Prepare Draft Contract Documents. (Typically, technical and business sections of contract and exhibits thereto are prepared by the technical and financial project team members.)*

The contract documents requiring preparation by the legal team would primarily be prepared by Douglas K. Kerner and Brian S. Biering.

- *Initiate development of Joint Powers Agreement.*

Raymond A. Biering would draft a Joint Powers Agreement for adoption by the member jurisdictions, provide ongoing support for presentation and negotiation of the JPA, and attend the various members' public hearings on the JPA as necessary and required.

- *Review of Draft RFP, as prepared by ARI.*

The project team would individually review and collectively comment on the draft RFP prepared by ARI.

- *Review of Final RFP, prior to release to short-listed companies.*

The project team would individually review and collectively comment on the Final RFP.

- *Support to project team in seeking approval of City and County governing bodies to release RFP.*

Support to the project team with regard to the JPA/RFP approval process is already covered above. However, assuming additional meetings are necessary with the governing bodies for the project and JPA/RFP, the additional estimated time is reflected in this scope of work.

- *Participation in Pre-Proposal Information Meeting.*

Raymond A. Biering would attend and participate in the pre-proposal meeting.

- *Preparation of responses to Proposed Contractor regarding legal issues. This is normally done through preparation of Addenda to the RFP.*

The legal team would provide responses to the proposed contractors on legal issues as needed.

- *Support in responding to questions on technical, financial and business matters, i.e., participation in meetings with project team to discuss responses and review of responses prepared by project team.*

The Legal Team would provide all necessary support in responding to questions on technical, financial and business matters, and participate in meetings with the Project Team as needed.

EXHIBIT B

PAYMENT ARRANGEMENTS

Periodic Compensation (with attached Schedule of Fees)

- A. For ATTORNIES services to be rendered under this contract, ATTORNIES shall be paid a total contract amount, including cost reimbursements, not to exceed \$ 75,000.00.
- B. Payment for services and /or reimbursement of costs shall be made upon ATTORNIES' 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 **Attachment B-1** (Schedule of Fees). Invoices submitted for payment that are based upon **Attachment B-1** must contain sufficient detail to enable an audit of the charges and provide supporting documentation if so specified in **Attachment B-1**.
- C. Monthly, ATTORNIES shall submit to the COUNTY DESIGNATED REPRESENTATIVE one consolidated invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory and within the cost basis of **Attachment B-1** shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of presentation.
- 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 ATTORNIES to correct such work or billings or seek any other legal remedy.

ATTACHMENT B-1

SCHEDULE OF FEES

An amount not to exceed \$75,000.00 for the services set forth above.

HOURLY RATES

ATTORNIES' hourly rates are as follows:

Raymond A. Biering, Esq.	\$ 350 per hour
Douglas K. Kerner, Esq.	\$ 350 per hour
Brian S. Biering, Esq.	\$ 200 per hour

COSTS AND EXPENSES

COUNTY shall reimburse ATTORNIES for certain costs and expenses actually incurred and reasonably necessary for completing the matter for which COUNTY has engaged ATTORNIES, as long as COUNTY's charges for costs and expenses are competitive with other sources of the same products or services. COUNTY shall reimburse ATTORNIES in accordance with the following guidelines:

Billable costs and expenses: COUNTY shall reimburse ATTORNIES for reasonable costs and expenses incurred by it in performing services for the COUNTY, such as travel (including mileage, parking, airfare, lodging, meals, and transportation), and postage.

Nonbillable overhead and administration: COUNTY does not expect to be charged for and will not pay for any of the following: ATTORNIES time spent preparing time sheets or bills, conflicts checks, local phone service, local travel costs, secretarial services, word processing services, librarian services, other clerical activities such as creating, organizing and maintaining files, distributing documents, overtime, or any other services traditionally considered overhead or administrative.

Document delivery: For document delivery costs that are billed to COUNTY, ATTORNIES shall use the most economical delivery method or service available. To help minimize such costs, ATTORNIES shall use messengers and overnight delivery only where necessary in the interests of urgency and reliability.

Multiple billing: If ATTORNIES work simultaneously on the COUNTY's matter and a matter for another client of ATTORNIES' firms, COUNTY shall be billed only for the proportionate amount of time spent on the COUNTY's matter.

Travel: COUNTY will reimburse ATTORNIES for reasonable travel expenses directly related to ATTORNIES' work for COUNTY when ATTORNIES have obtained COUNTY's prior approval. First class airfare, luxury accommodations and lavish meals are considered unreasonable expenses and will not be paid. Travel time outside of customary business hours (8 a.m. – 5:30 p.m.) should be billed only when productive work actually is being performed for the COUNTY.

BILLING PROCEDURE

All invoices must include the following information, in addition to the information specified in Exhibit B:

- Matter description and number;
- A chronological listing and informative description of all legal activity performed (whether or not billed) broken down by date, identity of timekeeper, time spent in increments of one-tenth of an hour, and amounts billed;
- A summary of the names and corresponding billing rates of each ATTORNEY or other personnel working on the matter with the total number of hours billed by each during the time period covered by the invoice;
- The total number of hours billed for the matter during the time period covered by the invoice;
- The total charges for the matter for the time period covered by the invoice, for the year to date, and for the matter to date; and
- The last payment, the total payments made by the COUNTY and any outstanding balances for the matter.

Reimbursable expenses must be included on each bill and should be broken down by category.

EXHIBIT C

STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS for contracts REQUIRING professional liability insurance

INDEMNIFICATION

Indemnification pertaining to other than Professional Services:

ATTORNIES shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including ATTORNIES' fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the ATTORNIES or their agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including ATTORNIES' fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the COUNTY.

ATTORNIES shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

Indemnification pertaining to Professional Services:

ATTORNIES shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including ATTORNIES' fees), judgments or liabilities arising 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 ATTORNIES or their agents or employees or other independent contractors directly responsible to him to the fullest extent allowable by law.

ATTORNIES shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

Without limiting the ATTORNIES' indemnification of the COUNTY, ATTORNIES shall procure the following required insurance coverages at its sole cost and expense. All insurance coverage is 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 ATTORNIES in default. Upon request by the COUNTY, ATTORNIES 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 ATTORNIES' 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 ATTORNIES are self-insured, they 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 ATTORNIES have no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and ATTORNIES submit 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 ATTORNIES and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the ATTORNIES in the indemnity and hold harmless provisions of the Indemnification Section of this Agreement between COUNTY and ATTORNIES. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of ATTORNIES pursuant to ATTORNIES' activities hereunder. ATTORNIES 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 subcontractors. 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.

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 non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."

If the policy providing liability coverage is on a 'claims-made' form, the ATTORNIES 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 ATTORNIES' 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 an on 'claims-made' form, the ATTORNIES 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.

ATTORNIES 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 ATTORNIES may be held responsible for payment of damages resulting from ATTORNIES' 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 ATTORNIES are not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the ATTORNIES' expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY'S Risk Manager 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. ATTORNIES agree to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.

Contract Summary Form: Contract Number : - - - -

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: FY 09/2010
D2. Budget Unit Number (plus -Ship/-Bill codes in paren's) : 013
D3. Requisition Number.....:
D4. Department Name.....: County Counsel
D5. Contact Person.....: Marie La Sala
D6. Phone.....: 208-2980

K1. Contract Type (check one): Personal Service [] Capital Project/Construction
K2. Brief Summary of Contract Description/Purpose: Outside Counsel
K3. Original Contract Amount.....: \$ 200,000 - \$ 250,000
K4. Contract Begin Date.....:
K5. Original Contract End Date.....:

K6. Amendment History (leave blank if no prior amendments):

Seq#	EffectiveDate	ThisAmndt	AmtCum	AmndtTo	DateNew	TotalAmt	New	EndDate	Purpose (2-4 words)
			\$			\$			

K7. Department Project Number.....: N/A

B1. Is this a Board Contract? (Yes/No): YES
B2. Number of Workers Displaced (if any): none
B3. Number of Competitive Bids (if any): N/A
B4. Lowest Bid Amount (if bid).....: \$ N/A
B5. If Board waived bids, show Agenda Date.....:
B6. ... and Agenda Item Number.....: #
B7. Boilerplate Contract Text Unaffected? (Yes / or cite ¶¶) :

F1. Encumbrance Transaction Code.....: 1701
F2. Current Year Encumbrance Amount.....: \$
F3. Fund Number: 0001
F4. Department Number.....: 013
F5. Division Number (if applicable).....:
F6. Account Number.....: 7650
F7. Cost Center number (if applicable):
F8. Payment Terms: Net 30

V1. Vendor Numbers (A=uditor; P=urchasing): Steven Joseph Adamski
V2. Payee/Contractor Name.....: Adamski Moroski Madden & Green LLP
V3. Mailing Address.....: PO Box 3835
V4. City State (two-letter) Zip (include +4 if known).....: San Luis Obispo, CA 93403-3835
V5. Telephone Number: (805) 543-0990
V6. Contractor's Federal Tax ID Number (EIN or SSN) : Christopher Thomas Ellison
V7. Contact Person: Ellison Schneider & Harris LLP
V8. Workers Comp Insurance Expiration Date: 2600 Capitol Ave Ste 400
V9. Liability Insurance Expiration Date[s] (G=enl; P=rofl): Sacramento, CA 95816-5905
(916) 447-2166