

A-8



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.: 013
For Agenda Of: December 8, 2009
Placement: Administrative
Estimated Tme:
Continued Item: No
If Yes, date from:
Vote Required: 4/5ths

TO: Board of Supervisors

FROM: Department Director: Dennis A. Marshall
County Counsel

Contact Info: Stephen D. Underwood, 568-2950
Chief Assistant County Counsel

SUBJECT: Contract with Outside Counsel for Pending Litigation – Terris v. County of Santa Barbara, Santa Barbara Superior Court Case No. 1339241

County Counsel Concurrence

Auditor-Controller Concurrence

Yes

As to form: Yes

Recommended Actions: County Counsel recommends that the Board of Supervisors:

Authorize the Chair to execute the attached Agreement for Professional Legal Services between the County of Santa Barbara and the David Nye, Nye, Peabody, Sterling & Hale LLP.

Summary Text:

The County has been served with a lawsuit in the matter of Shawn Terris v. County of Santa Barbara, Superior Court Case No. 1339241. County Counsel wishes to associate with David Nye in the defense of the litigation. County Counsel and Mr. Nye's firm will work together in the defense of this litigation. Mr. Nye has represented the City of Lompoc and the UC Regents in litigation and employment-related matters and brings additional special expertise to assist in the defense of this matter.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis: The contract has a cap of \$250,000.00. The cost will be funded by the Risk Management Liability Fund. (Fund 1912) Currently there is \$7,379,821.00 in the Fund. The Liability

Fund is used to pay claims, settlements, and cost of litigation, including outside counsel, when necessary, for liability cases.

Staffing Impacts:

Contracting with outside counsel will allow the County to obtain the specialized legal services needed in this matter without hiring additional staff attorneys. The Office of County Counsel is currently down 6 FTE attorney positions, affecting its capacity to take on additional litigation matters.

Attachments:

Legal Services Agreement

Authored by:

Stephen D. Underwood, Chief Assistant County Counsel

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 Nye, Peabody, Sterling & Hale, LLP (hereafter ATTORNEY) wherein ATTORNEY agrees to provide and COUNTY agrees to accept the services specified herein.

RECITALS

WHEREAS, COUNTY requires advice and representation by private legal counsel regarding litigation matters.

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;

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

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

1. **DESIGNATED REPRESENTATIVE.** Chief Assistant County Counsel Stephen D. Underwood at phone number 805-568-2950 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. David Nye, Nye, Peabody, Sterling & Hale, LLP at phone number (805) 963-2345 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 first class mail, postage prepaid, or otherwise delivered as agreed upon by the parties, as follows:

To COUNTY: Stephen D. Underwood, Chief Assistant County Counsel
 Office of County Counsel
 County of Santa Barbara
 105 East Anapamu Street # 201
 Santa Barbara, California, 93101

To ATTORNEY: David Nye
 Nye, Peabody, Sterling & Hale, LLP
 33 West Mission Street, Suite 201
 Santa Barbara, California 93101

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

4. **TERM.** This agreement shall commence performance on December 1, 2009, and shall end performance upon completion unless otherwise terminated in accordance with Section 17.

5. **COMPENSATION OF ATTORNEY.** ATTORNEY shall be paid for performance under this Agreement in accordance with the terms of EXHIBITS B and B-1 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.** ATTORNEY shall perform all of its services under this Agreement as an independent contractor and not as an employee of COUNTY. 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.

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. Permits and/or licenses shall be obtained and maintained by ATTORNEY without additional compensation.

8. **TAXES.** 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.

9. **CONFLICT OF INTEREST.** ATTORNEY covenants that ATTORNEY presently has 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. 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.

10. **EXPERTS/CONSULTANTS.** ATTORNEY 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. ATTORNEY 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.** 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.

13. **INDEMNIFICATION AND INSURANCE.** ATTORNEY 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 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.

15. **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.

16. **ASSIGNMENT.** ATTORNEY shall not assign any of its rights nor transfer any of its 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 ATTORNEY, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience or because of the failure of ATTORNEY to fulfill the obligations herein. Upon receipt of notice, ATTORNEY 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 ATTORNEY 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 ATTORNEY 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 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.

2. 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 this Agreement by written notice, which shall be effective upon receipt by ATTORNEY.

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.

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. ATTORNEY shall, at his sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in

admission of ATTORNEY in any action or proceeding against ATTORNEY, whether COUNTY be 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.

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, 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.

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 Nye, Peabody, Sterling & Hale, LLP

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

COUNTY OF SANTA BARBARA

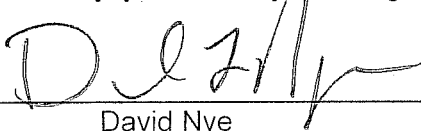
By: _____
Joe Centeno
Chair, Board of Supervisors

Date: _____

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Deputy

ATTORNEY [Nye, Peabody Sterling & Hale, LLP]

By: 
David Nye

SocSec or TaxID Number: 02-0545936

APPROVED AS TO FORM:
DENNIS A. MARSHALL
COUNTY COUNSEL

By: 
Chief Assistant County Counsel

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

By: 
Deputy

APPROVED AS TO FORM:
Ray Aromatorio,
RISK PROGRAM ADMINISTRATOR

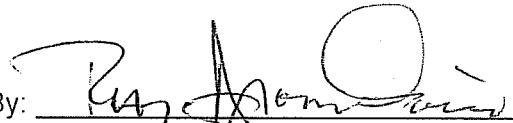
By: 
Risk Program Administrator

EXHIBIT A

STATEMENT OF WORK

Nye, Peabody, Sterling & Hale, LLP (hereafter ATTORNEY) agrees to provide and COUNTY agrees to accept the services specified herein.

ATTORNEY shall provide COUNTY with legal and related services relating to the defense of litigation against the COUNTY in Terris v. County of Santa Barbara, Superior Court Case No. 1339241.

ATTORNEY shall associate with and work in cooperation and coordination with COUNTY's Office of County Counsel.

EXHIBIT B

PAYMENT ARRANGEMENTS

Periodic Compensation (with attached Schedule of Fees)

- A. For ATTORNEY services to be rendered under this Agreement, ATTORNEY shall be paid an amount not to exceed \$250,000.
- 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 **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, ATTORNEY shall submit to the COUNTY DESIGNATED REPRESENTATIVE an 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 approval by COUNTY's REPRESENTATIVE.
- 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.

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.

ATTACHMENT B-1

Schedule of Fees and Costs

HOURLY RATES

ATTORNEY's hourly rates are chargeable in an amount not to exceed \$250.00.

COSTS AND EXPENSES

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

Billable costs and expenses: COUNTY shall reimburse ATTORNEY at the COUNTY's reimbursement rates for reasonable costs and expenses incurred by it in performing services for the COUNTY, such as photocopying, messenger and delivery service, computerized research, travel (including mileage, parking, airfare, lodging, meals, and transportation), long-distance telephone, and filing fees (note, no fees are typically required for County filings).

Nonbillable overhead and administration: COUNTY does not expect to be charged for and will not pay for any of the following: attorney 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.

Photocopying: COUNTY will reimburse ATTORNEY at a maximum of \$.15 per page for normal photocopying and will not be responsible for time spent by photocopying personnel. ATTORNEY shall give COUNTY an opportunity to use its own internal staff to duplicate documents or an outside photocopying vendor if certain jobs can be less expensively performed by the COUNTY or by the vendor.

Computerized research: ATTORNEY shall perform any computerized research in a low-cost manner. Computerized research charges such as Lexis/Nexis or Westlaw that are billed to COUNTY shall be billed at ATTORNEY's actual cost (including any discounts) and shall be accompanied by a copy of the invoice received by ATTORNEY. The COUNTY does not pay legal fees for research on basic issues of law, especially where outside counsel has been hired for a specific area of expertise. Matters of common knowledge among reasonably experienced counsel in the locale are non-chargeable items. We expect that where circumstances exist that enable you to utilize your data or brief banks, COUNTY will be charged only for the updating of previously researched material. It is expected that paralegals or junior associates will be utilized on research matters avoiding extensive research time expended by partners or senior associates. A copy of significant research products should be submitted to the COUNTY.

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

Multiple billing: If an attorney works simultaneously on the COUNTY's matter and a matter for another client of ATTORNEY's firm, COUNTY shall be billed only for the proportionate amount of time spent on the COUNTY's matter.

Staffing: COUNTY expects to be consulted in determining which individuals will work on a matter for us. While COUNTY recognizes that staffing changes may be necessary from time to time, the COUNTY will not pay for ATTORNEY's "downtime" or learning time that may result from such a staffing change. The

COUNTY does not believe it appropriate to pay legal fees for the training of your personnel. Also, in order to avoid duplication of effort and to minimize legal fees, the COUNTY expects strict limits on the number of attorneys and paralegals attending meetings, depositions or court proceedings. In most instances, we believe that only one privately retained attorney should be present at any such meeting or proceeding. In addition, intra-office conferences and meetings will be viewed skeptically and should be kept to a bare minimum.

Budgeting: COUNTY expects ATTORNEY to provide the COUNTY with a written budget setting forth the scope and amount of work anticipated, as well as the estimated fees and disbursements. The budget should specifically identify the work expected to be done, the identity and billing rate of each attorney and paralegal to be involved and the amount of time it is expected to take. The COUNTY expects this budget to be updated quarterly without reminders from us. In addition, the COUNTY expects you to notify us promptly in the event that any issues arise which are likely to cause the anticipated legal fees or disbursements to vary significantly from those projected in the current budget.

Travel: COUNTY will reimburse ATTORNEY at the COUNTY's reimbursement rates for reasonable travel expenses directly related to ATTORNEY's work for COUNTY when ATTORNEY has obtained COUNTY's prior approval. First or business 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. The COUNTY expects ATTORNEY to avoid unnecessary travel. Time away from the office which is not spent traveling or performing legal services for the County Defendants should not be billed to us. Travel time may be billed at 50% of your billable rates to the COUNTY unless ATTORNEY is located outside of the County of Santa Barbara.

Allocation of work: In order to obtain appropriate expertise for the matter and as a technique to keep costs down, ATTORNEY will use attorneys, paralegal personnel and other staff in the firm of the lowest billing rate consistent with the expertise required for the project.

Vendors: COUNTY expects ATTORNEY to check with us before committing to any large purchases from any third-party vendor. Statements from such third-party vendors, consultants or experts should be paid directly by you and then included with other disbursements and expenses in your monthly statement.

RESPONSE TO AUDIT INQUIRIES

If COUNTY asks ATTORNEY to assist in connection with the issuance of an auditor's report on COUNTY's financial statements, ATTORNEY may be requested to respond to an inquiry from COUNTY's auditors based upon accounting standards that require COUNTY's auditors to make inquiry of COUNTY's lawyers as to their knowledge of certain "loss contingencies." Upon receipt of an audit inquiry ATTORNEY will, among other things, search ATTORNEY's databases to identify lawyers devoting time to COUNTY's matters, make inquiry of those lawyers as to their knowledge of any reportable matters and prepare a written response to COUNTY's auditors and to COUNTY.

To assist ATTORNEY in responding timely to COUNTY's auditors, COUNTY shall direct all audit inquiries to:

David Nye
Nye, Peabody, Sterling & Hale LLP
33 West Mission Street, Suite 201
Santa Barbara, California 93101

If there are any questions presented by COUNTY's audit inquiry letter, ATTORNEY shall contact COUNTY.

ATTORNEY's internal audit letter procedures are designed to provide a timely response within the parameters established by the Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information of the American Bar Association which, absent special circumstances, is within ten (10) business days after the date specified in the request letter as the "effective date" of ATTORNEY's response. In addition, COUNTY's letter should clearly identify the names of all subsidiaries and affiliates to be included if applicable (client and matter numbers would be helpful.)

EXHIBIT C

STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS for contracts REQUIRING professional liability insurance

INDEMNIFICATION

Indemnification pertaining to other than Professional Services:

Other than in the performance of professional services and to the full extent permitted by law, ATTORNEY shall defend, indemnify and hold COUNTY, its officers, agents and employees harmless from and against any and all liability, loss, cost of any kind, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance or attempted performance of this Agreement but only in proportion to and to the extent such liability, loss, cost, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of ATTORNEY, its officers, agents or employees or subcontractors of ATTORNEY.

ATTORNEY 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:

ATTORNEY shall defend, 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 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 ATTORNEY or his agents or employees or other independent contractors directly responsible to him to the fullest extent allowable by law.

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

INSURANCE

Without limiting the ATTORNEY's indemnification of the COUNTY, ATTORNEY 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 ATTORNEY in default. Upon request by the COUNTY, ATTORNEY 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 ATTORNEY'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 ATTORNEY 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 ATTORNEY has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and ATTORNEY 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 ATTORNEY and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the ATTORNEY in the indemnity and hold harmless provisions of the Indemnification Section of this Agreement between COUNTY and ATTORNEY. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of ATTORNEY pursuant to ATTORNEY's activities hereunder. ATTORNEYS 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:

"It is agreed that this insurance is primary, and that any insurance issued to the additional insured applicable to this loss, other than that provided by this endorsement, shall be excess over this insurance to the extent any insured other than the additional insured, is solely negligent for any liabilities, losses, claims, suits, judgments, injuries, cost and/or otherwise demands."

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

ATTORNEY 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 ATTORNEY may be held responsible for payment of damages resulting from ATTORNEY'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 ATTORNEY is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the ATTORNEY'S 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. ATTORNEY agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.