

CONTRACT FOR SPECIAL SERVICES BY  
INDEPENDENT CONTRACTOR

THIS CONTRACT is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the COUNTY OF SAN LUIS OBISPO (hereinafter referred to as "County") and Carl Warren & Company, an independent contractor (hereinafter referred to as "Contractor").

WITNESSETH

WHEREAS, the County of San Luis Obispo has need for special services and advice for Liability Program Third Party Administration services; and

WHEREAS, Contractor is specially trained, experienced, expert and competent to perform such special services;

NOW THEREFORE, the parties mutually agree as follows:

1. **Scope of Services.** Pursuant to this Contract, Contractor shall provide to the County the following special services described in Exhibit "A" and "A-1".
2. **Compensation.** County shall pay to Contractor as compensation in full for all services performed by Contractor pursuant to this Contract in accordance with the terms as described in Exhibit "B". Payments shall be made within thirty (30) days after the receipt of an itemized statement from Contractor required by paragraph 3 herein, which has been previously approved by an appropriate representative of the County department for whom Contractor is directly working.
3. **Billing.** Contractor shall submit to the County, on a monthly basis, a detailed statement of services performed during that preceding period, including the number of hours of work performed.
4. **Term of Contract.** This Contract shall commence on September 11, 2012, for approximately a three year term until June 30, 2015, and shall be automatically renewed under like terms for one (1) year periods thereafter, subject, however to the rights of modification contained herein and the provisions of paragraphs 5 and 6.
5. **Termination of Contract for Convenience of Either Party.** Either party may terminate this contract at any time by giving to the other party ninety (90) days written notice of such termination. Termination shall have no effect on the rights and obligations of the parties arising out of

any transaction occurring prior to the effective date of such termination. Contractor shall be paid for all work satisfactorily completed prior to the effective date of said termination.

6. Termination of Contract for Cause. If Contractor fails to perform Contractor's duties to the satisfaction of the County or if Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract or if Contractor shall violate any of the terms or provisions of this Contract or if Contractor, Contractor's agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the County, then County shall have the right to terminate this Contract effective immediately upon the County giving written notice thereof to the Contractor. Termination shall have no affect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Contractor shall be paid for all work satisfactorily completed prior to the effective date of such termination. If County's termination of Contractor for cause is defective for any reason, including but not limited to County's reliance on erroneous facts concerning Contractor's performance, or any defect in notice thereof, County's maximum liability shall not exceed the amount payable to Contractor under paragraph 5 above.

7. Equal Employment Opportunity. During the performance of this Contract, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, and hereby promises to comply with the provision on contractor agreements contained in Presidential Executive Order Number 11246 as amended by Executive Order (1) 75 and as approved by Department of Labor Relations (41CFR Part 61).

8. Entire Agreement and Modification. This Contract supersedes all previous contracts and constitutes the entire understanding of the parties hereto. Contractor shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Contractor specifically acknowledges that in entering into and executing this Contract, Contractor relies solely upon the provisions contained in this Contract and no others. The Board of Supervisors delegates to the County of San Luis Obispo Human Resources Director the authority to amend this Contract to extend the term of this Contract, delete goods or services, and/or provide for additional goods and/or services.. Any amendment made pursuant to a delegation of authority will only be effective if, prior to the delivery of the goods and/or commencement of services or extension of the Contract, the amendment is memorialized in writing, is approved by County Counsel, and is signed by the County of San Luis Obispo General Services Agency Director.

9. **Non-Assignment of Contract.** Inasmuch as this Contract is intended to secure the specialized services of the Contractor, Contractor may not assign, transfer, delegate or sublet any interest therein without the prior written consent of County and any such assignment, transfer, delegation, or sublease without the County's prior written consent shall be considered null and void.

10. **Covenant.** This Contract has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Contract shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Contract.

11. **Enforceability.** If any term, covenant, condition or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

12. **Employment Status.** Contractor shall, during the entire term of the Contract, be construed to be an independent Contractor and nothing in this Contract is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow County to exercise discretion or control over the professional manner in which Contractor performs the services which are the subject matter of this Contract; provided always however that the services to be provided by Contractor shall be provided in a manner consistent with all applicable standards and regulations governing such services.

Contractor understands and agrees that Contractor's personnel are not and will not be eligible for membership in or any benefits from any County group plan for hospital, surgical or medical insurance or for membership in any County retirement program or for paid vacation, paid sick leave, or other leave, with or without pay or for any other benefit which accrues to a County employee.

13. **Warranty of Contractor.** Contractor warrants that Contractor and each of the personnel employed or otherwise retained by Contractor are properly certified, licensed, and insured under the laws and regulations of the State of California to provide the special services herein agreed to.

14. **Indemnification.** Contractor shall defend, indemnify and hold harmless the County, its officers and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, or other losses that may be asserted by any person or entity, including Contractor, and that arise out of or are made in hereunder. The obligation to indemnify shall be effective and shall extend to all such claims or losses in their entirety. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the County, its officers and employees.

It is the intent of the parties to provide the County the fullest indemnification, defense, and 'hold harmless' rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this contract and the remaining language shall be given full force and effect.

15. **Insurance.** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

1. **MINIMUM SCOPE OF INSURANCE** Coverage shall be at least as broad as:

a. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

c. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If the contractor maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the contractor.

#### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### **Additional Insured Status**

The County, its officers, officials, employees, and volunteers are to be covered as insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

#### **Primary Coverage**

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

**Notice of Cancellation**

Each insurance policy required above shall provide that coverage shall not be canceled, except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the County.

**Waiver of Subrogation**

Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

**Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

**Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Human Resource Director/Risk Manager.

**Verification of Coverage**

Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to:

San Luis Obispo County  
Risk Management  
1055 Monterey Street, RM D250  
San Luis Obispo, CA 93408

**Special Risks or Circumstances**

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

16. Records.

a. Contractor shall keep complete and accurate records for the services performed pursuant to this Contract and any records required by law or government regulation and shall make such records available to County upon request.

b. Contractor shall assure the confidentiality of any records that are required by law to be so maintained.

c. Contractor shall prepare and forward such additional or supplementary records as County may reasonably request.

17. Accounting.

Contractor shall maintain accounting records in accordance with generally accepted accounting principles. The Contractor shall obtain the services of a qualified bookkeeper or accountant to ensure that accounting records meet this requirement.

Contractor shall maintain acceptable books of accounts which include, but are not limited to, a general ledger, cash receipts journal, cash disbursements journal, general journal and payroll journal.

Contractor shall record costs in a cost accounting system which clearly identifies the source of all costs. Contract costs shall not be co-mingled with other project costs, but shall be directly traceable to contract billings to the County.

The use of worksheets to produce billings shall be kept to a minimum. If worksheets are used to produce billings, all entries should be documented and clearly traceable to the Contractor's cost accounting records.

All accounting records and supporting documentation shall be retained for a minimum of five (5) years or until any audit findings are resolved, whichever is later. Contractor shall safeguard the accounting records and supporting documentation.

Contractor shall make accounting records and supporting documentation available on demand to the County and for inspection and audit. Disallowed costs shall be repaid to the County. The County may require to have the Contractor's accounting records audited, at Contractor's expense, by an accountant licensed by the State of California. The audit shall be presented to the County Auditor-Controller within thirty (30) days after completion of the audit.

18. Notices. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by first class mail to the County at:

San Luis Obispo County  
Risk Management  
1055 Monterey Street, RM D250  
San Luis Obispo, CA 93408

and to the Contractor:

Carl Warren & Company  
770 S. Placentia Avenue  
Placentia, CA 92870

19. **Cost Disclosure - Documents and Written Reports.** Pursuant to Government Code section 7550, if the total cost of this Contract is over \$5,000.00, the Contractor shall include in all final documents and in all written reports submitted a written summary of costs, which shall set forth the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such documentation or written report. The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

20. **Copyright.** Any reports, maps, documents or other materials produced in whole or part under this Contract shall be the property of the County and none shall be subject to an application for copyright by or on behalf of Contractor.

21. **Findings Confidential.** No reports, maps, information, documents, or any other materials given to or prepared by Contractor under this Contract which County requests in writing to be kept confidential, shall be made available to any individual or organization by Contractor without the prior written approval of County. However, Contractor shall be free to disclose such data as is publicly available.

22. **Liquidated Damages.** County and Contractor agree that Contractor's failure to follow Tort Claims Act procedures or to comply with the time limits contained in the Government Code or excess insurance carrier protocols may result in potential costs or liability to County. Because each claim is unique and must be evaluated on its unique set of facts and circumstances, it is impossible for the parties to foresee the outcome of the Contractor's failure to comply with Tort Claims Act procedures, time limits, or excess carrier protocols. Therefore, the parties agree that Contractor shall be liable for liquidated damages for the occurrences listed below, in the amounts listed below:

- a. Upon timely delivery of a claim from the County to Contractor, Contractor's failure to give timely notice of the insufficiency of the claim, notice of rejection of the claim because of

lateness, or mistaken rejection of a late claim without mentioning its lateness shall result in Contractor's payment to County of \$250.00 for each such failure.

b. If the County provides Contractor with timely copy of lawsuit served on the County, and Contractor fails to make timely retention of defense counsel, resulting in County's default response to the lawsuit, Contractor shall pay County \$1,000 for each failure.

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IN WITNESS THEREOF, County and Contractor have executed this Contract on the day and year first hereinabove set forth.

APPROVED AS TO FORM AND LEGAL EFFECT:

Warren R. Jensen  
County Counsel

By:   
Deputy County Counsel

Assistant  
Date: 9/6/12

COUNTY OF SAN LUIS OBISPO

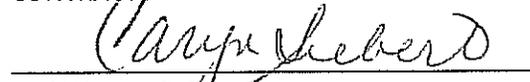
By: \_\_\_\_\_  
Chairman of the Board of Supervisors

Approved by the Board of Supervisors on this day: \_\_\_\_\_, 2012

ATTEST:

\_\_\_\_\_  
Clerk of the Board of Supervisors

CONTRACTOR:

  
Carl Warren & Company  
Caryn Siebert

Title: President & CEO

Date: 8/28/12