CONTRACT FOR SPECIAL SERVICES BY INDEPENDENT CONTRACTOR

THIS CONTRACT is entered into this 1 day of Oct, 2013, by and between the COUNTY OF SAN LUIS OBISPO (hereinafter referred to as "County") and PORTER SCOTT, A PROFESSIONAL CORPORATION, an independent contractor (hereinafter referred to as "Firm").

WITNESSETH

WHEREAS, the County of San Luis Obispo has need for special legal services for outside counsel to handle the County's litigation with regard to its self-insurance program; and

WHEREAS, Firm has extensive experience in litigation and the representation of public entities; and

WHEREAS, County desires to engage the services of Firm to provide specialized legal services in the area of public entity litigation and to provide legal services in a competent, professional, ethical and cost-effective manner;

NOW THEREFORE, the parties mutually agree as follows:

1. **Scope of Services**. Pursuant to this Contract, Firm shall provide to the County defense litigation services through its self insurance program and shall defend the County in all litigation to which it is assigned. Said services shall include, but not be limited to: appearing on behalf of the County, filing responsive pleadings, conducting and responding to discovery, filing and responding to motions where indicated, participating in settlement negotiations, taking cases to trial and handling appeals.

Firm shall keep County Counsel, Risk Management and County's Third Party Administrator (hereinafter referred to as "TPA") fully advised of litigation developments and comply with all written reporting requirements.

Firm shall comply with the County-approved litigation budget and strategies and shall notify County Counsel, Risk Management, and County's TPA immediately of any development that will significantly impact the County's interests in a particular matter.

Firm shall seek settlement authority from the Board of Supervisors before negotiating settlements or resolution of any matter.

2. **Compensation**. County, through its TPA, shall pay to Firm as compensation for all services performed an hourly rate of $205.00 per hour for partner attorney time, $185 per hour for associate attorney time and $95.00 per hour for paralegal time. Payments shall be made within thirty (30) days after the receipt of an itemized statement from Firm as required by paragraph 3 herein. In the event that Firm desires to change its hourly rate, it shall make a request to County for consideration. The Human Resources Director shall have the authority to approve an increase in the hourly rate that does not exceed $215.00 for attorney time and $120.00 for paralegal time.

3. **Billing**. Firm shall submit to the County, on a monthly basis for each case being handled, 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 February 1, 2013, and shall terminate on January 31, 2016, unless renewed by the Human Resources Director for an additional term not to exceed two years, 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 for any reason by giving (30) days written notice of such termination. Termination shall have no effect on upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Firm

shall be paid for all work satisfactorily completed prior to the effective date of said termination. Upon termination, Firm shall comply with the requirements as set forth in paragraph 7.

6. **Termination of Contract for Cause**. If Firm fails to perform its duties to the satisfaction of the County, or if Firm fails to fulfill in a timely and professional manner Firm's obligations under this Contract, or if Firm shall violate any of the terms or provisions of this Contract, or if Firm, Firm'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, or if Firm engages in any conduct or activity which has the potential to put the County at risk, or if Firm violates any Rule of Professional Conduct or Conflict of Interest rule, then County shall have the right to terminate this Contract, effective immediately, upon the County giving written notice thereof to the Firm. 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. Firm shall be paid for all work satisfactorily completed prior to the effective date of such termination. If County's termination of Firm for cause is defective for any reason, including but not limited to County's reliance on erroneous facts concerning Firm's performance, or any defect in notice thereof, County's maximum liability shall not exceed the amount payable to Firm under paragraph 5 above.

7. **Requirements Upon Termination**. Upon termination under either Paragraph 5 or 6, Firm shall arrange for the orderly transmission of all files then currently assigned to it. At County's direction, the original files, in their entirety, shall be transferred to either the Office of County Counsel or another law firm. Once said files are transferred, should any communication or correspondence come to Firm regarding a transferred case, such communication or correspondence shall immediately be forwarded to the Office of County

Counsel. Firm shall cooperate in executing substitutions of attorney and assist in completing any other paperwork necessary to ensure that the case is appropriately transferred.

Firm understands and recognizes that the California Rules of Professional Conduct, including but not limited to Rule 3-310 (Avoiding the Representation of Adverse Interests), apply not only to representation of the County while subject to this Contract, but also apply once this Contract is terminated. Accordingly, following termination, Firm shall not represent another party that is adverse to County nor encourage another party to take an adverse position against County.

8. **Equal Employment Opportunity**. During the performance of this Contract, Firm agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

9. **Entire Agreement and Modification**. This Contract supersedes all previous contracts and constitutes the entire understanding of the parties hereto. Firm 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. Firm specifically acknowledges that in entering into and executing this Contract, Firm relies solely upon the provisions contained in this Contract and no others.

10. **Non-Assignment of Contract**. Inasmuch as this Contract is intended to secure the specialized services of the Firm, Firm 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.

11. **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.

12. **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.

13. **Employment Status**. Firm 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 Firm performs the services which are the subject matter of this Contract; provided always however that the services to be provided by Firm shall be provided in a manner consistent with all applicable standards and regulations governing such services.

Firm understands and agrees that Firm'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.

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

15. **Indemnification**. Firm shall defend, indemnify and hold harmless the County, its officers and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities or other losses that may be asserted by any person or entity, including Firm, and that arise out of or are made in connection with the acts or omissions, relating to the performance of any duty, obligation, or work hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses arise from the comparative negligence of the County, its officers and employees. 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.

16. **Insurance**. Firm shall procure the following required insurance coverages at its sole cost and expense and maintain in full force and effect for the period covered by this Contract such insurance. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than B+VIII and are admitted insurance companies in the State of California, or (2) insurers of equivalent documented quality which the County Risk Manager has approved in writing.

A. **General Requirements**. The following requirements apply to all insurance to be provided by Firm:

1. A Certificate of Insurance shall be furnished to County prior to commencement of work. Upon request by the County, Firm shall provide a certified copy of any insurance policy to the County within ten (10) working days;

2. Certificates and policies shall state that the policies not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to County;

3. Approval of the insurance by County shall not relieve or decrease the extent to which the Firm may be held responsible for payment of damages resulting from Firm's services or operations pursuant to this contract; and

4. The parties expressly agree that the insurance clauses in this contract are an integral part of the performance exchanged in this contract. The compensation stated in this contract includes compensation for the risks transferred to Firm by the insurance clauses.

B. **Professional Liability Insurance**. Firm shall maintain in full force and effect during the entire term of this Contract, professional liability "errors and omissions" insurance with limits of liability of not less than $1,000,000 per claim or occurrence to cover all services rendered by Firm pursuant to this Contract.

C. **Commercial General Liability (CGL)**. Firm shall maintain in full force and effect, for the period covered by this Contract, Commercial General Liability insurance with limits of liability of not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, property damage, and automobile coverage in the total amount of $1,000,000; and including the following coverages:

1. Personal Injury and Bodily Injury, including death resulting therefrom;
2. Property Damage; and
3. Automobile coverage which shall include owned, non-owned and hired vehicles.

D. **Endorsements**. The following endorsements must be provided in the CGL policy:

a. If the insurance policy covers an "accident" basis, it must be changed to "occurrence";

b. The policy must cover personal injury as well as bodily injury;

c. Blanket contractual liability must be afforded and the policy must contain a "Cross Liability" or "Severability of Interest" endorsement; and

d. The County of San Luis Obispo, its officers, employees and agents shall be named as additional insureds under the policy. The policy shall provide that the insurance will operate as primary insurance. No other insurance effected by the County, whether commercial or self-insurance, will be called upon to contribute to a loss hereunder. Nothing contained in this Contract shall be construed to require Firm's insurance to indemnify County in contravention of Insurance Code section 11580.04.

E. **Worker's Compensation Insurance**. In accordance with the provisions of Labor Code section 3700, if Firm has any employees, Firm is required to be insured against liability for Worker's Compensation or to undertake self-insurance. Firm agrees to comply with such provisions before commencing the performance of the work of this Contract. The policy shall be endorsed with the following specific language:

1. Firm and its insurer shall waive all rights of subrogation against the County, its officers and employees for workers' compensation losses arising out of this Agreement.

17. Records.

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

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

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:

Risk Manager
County of San Luis Obispo
1055 Monterey Street, Room D250
San Luis Obispo, CA 93408

and to the Firm:

PORTER SCOTT, APC
350 University Avenue, Suite 200
Sacramento, CA 95825

19. Conflict of Interest. Firm covenants that it has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required under this Contract and that no person having any such interest shall be employed by Firm.

No member, officer, or employee of the County during their tenure, shall have any interest, direct or indirect, in this Contract or the proceeds thereof. The Firm is subject to the requirements of the Political Reform Act as promulgated by the Fair Political Practices Commission and implemented by the California Code of Regulations, title 2, section 18000 et seq. The Firm shall at all times comply with the applicable provisions therein, including, but not specifically limited to the California Code of Regulations, title 2, chapter 7, "Conflicts of Interest" (section 18700 et seq.). The Firm shall also comply with all applicable provisions of other laws pertaining to conflict of interest requirements. If the Firm must declare a conflict of interest, the Firm shall forthwith report the conflict, in writing, to the County and shall provide any additional details requested by the County in a timely manner.

20. California Rules of Professional Conduct. Firm shall at all times comply with the Rules of Professional Conduct and any amendments thereto, as adopted by the State Bar of California and approved by the California Supreme Court. Failure to comply with said rules will be grounds for immediate termination.

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

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: _____
Chief Deputy County Counsel

Date: 4/29/13

COUNTY OF SAN LUIS OBISPO

By: _____
Chairman of the Board of Supervisors

Approved by the Board of Supervisors this on
_____, 2013

ATTEST:

_____
Clerk of the Board of Supervisors

FIRM: Porter Scott

John J. Cassidy

Title: Partner

Date: 4-25-13