

**CONTRACT FOR SPECIAL SERVICES BY
INDEPENDENT CONTRACTOR**

THIS CONTRACT is entered into this ____ day of _____, 2014, by and between the COUNTY OF SAN LUIS OBISPO (hereinafter referred to as "County") and Fulbright & Jaworski LLP, a member of Norton Rose Fulbright, an independent contractor (hereinafter referred to as "Contractor").

WITNESSETH

WHEREAS, the County of San Luis Obispo has a need for specialized legal services in order to provide general advice and counsel regarding public entity financing and specific counsel and advice with respect to existing and future complex financial transactions to which the County is or may be a party; and

WHEREAS, the Contractor is specially trained, experienced, expert and competent to perform the specialized legal services needed; and

WHEREAS, the County desires to engage the services of Contractor to provide specialized, competent, and professional legal services in the area of public finance;

NOW THEREFORE, in consideration of the covenants, terms and conditions, and other stipulations set forth herein, the parties mutually agree as follows:

1. **Scope of Services**. Contractor will provide specialized legal services to the County from time to time regarding the County's debt portfolio, public financing transactions such as general obligation bond financings, certificates of participation and lease revenue bond financing; will assist the County on future refundings or other financing needs; and will provide support to County staff on related matters when so requested by the County Auditor. These services may include participation in telephone conferences with all counsel and representatives of the County, the County's financial advisor, underwriter, and a bond insurer, if any, for

particular transactions; negotiations of the terms of the particular financing mechanism with County staff, the underwriter and their counsel; preparation of legal documents and resolutions for consideration by the County Board of Supervisors; review of the forms of a purchase contract and the preliminary and final official statements prepared by the underwriter's counsel, as applicable; discussions with the rating agencies and/or bond insurer for a particular issue; delivery of an opinion respecting the validity and tax status of particular financing mechanism used by the County to finance a specific project or projects. Contractor's services may also include the provision of advice and counsel regarding the County's continuing disclosure requirements under Securities and Exchange Commission Rule 15c2-12, as well as Electronic Municipal Market Access ("EMMA") searches and staff training. County may limit or expand the scope of Contractor's representation from time to time, provided that the County will not substantially expand the scope of Contractor's representation without a further written agreement.

The County Auditor shall be the primary point of contact for matters related to this agreement and is the officer with authority to engage the services of the Contractor hereunder for advice and counsel with respect to financial transactions for which the Contractor's services are needed.

2. Independent Contractor. Contractor shall, during the entire duration of this agreement, be construed to be an independent contractor and nothing in this agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow County to exercise direction or control over the professional manner in which Contractor performs the services that are the subject matter of this agreement; provided 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.

3. **Compensation.** In consideration for the services provided hereunder, Contractor shall be compensated for services as provided in Exhibit A, attached hereto and incorporated herein by reference. The discounted hourly rates set forth therein will be binding upon Contractor for 12 months following execution of this agreement, at which time such rates can be confirmed or renegotiated.

4. **Billing.** Except with respect to the fixed fees referenced in Exhibit A, attached hereto, which would be due and payable only after the closing of a particular financing matter for which Contractor has been engaged as Bond Counsel, Contractor shall submit invoices to the County periodically, when amounts accumulate to \$5,000 or, if less, at the conclusion of an assignment. Such invoices shall be due and payable by the County 30 days after submission.

5. **Term and Termination.** This agreement is of indefinite duration and either party may terminate the agreement at any time by providing the other party with 30 days written notice. Termination of this agreement shall have no effect 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 termination.

Notwithstanding the above rights of either party to terminate the agreement upon 30-days written notice to the other party, County may terminate this agreement immediately upon written notice if any of the following circumstance occurs:

- a. Contractor fails to perform its duties to the satisfaction of the County;

b. Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract;

c. 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;

d. Contractor engages in any conduct or activity that has the potential to put the County at risk;

e. Contractor's attorneys violate any Rule of Professional Conduct or Conflict of Interest rule

Termination shall not affect 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.

Contractor 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, Contractor shall not represent another party that is adverse to County, nor encourage another party to take an adverse position against County.

6. **Indemnification**. Contractor acknowledges that no claim by the County for damages resulting from breach of the Contractor's duties in connection with its representation shall be limited to the amount of malpractice insurance retained by Contractor.

7. **Insurance**. Contractor 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 Contractor:

1.) A Certificate of Insurance shall be furnished to County prior to commencement of work. Upon request by the County, Contractor 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 Contractor may be held responsible for payment of damages resulting from Contractor'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 Contractor by the insurance clauses.

b. Professional Liability Insurance. Contractor 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 \$20,000,000 per occurrence to cover all services rendered by Contractor pursuant to this Contract.

c. Commercial General Liability (CGL). Contractor 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 \$2,000,000; 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:

- 1.) If the insurance policy covers an "accident" basis, it must be changed to "occurrence";
- 2.) The policy must cover personal injury as well as bodily injury;
- 3.) Blanket contractual liability must be afforded and the policy must contain a "Cross Liability" or "Severability of Interest" endorsement; and
- 4.) 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 Contractor'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 Contractor has any employees, Contractor is required to be insured against liability for Worker's Compensation or to undertake self-insurance. Contractor shall

comply with such provisions before commencing the performance of the work of this Contract.

The policy shall be endorsed with the following specific language:

“Contractor 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.”

8. **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. Ann La Morena Rohlin, and attorneys under her direction shall be responsible for the work. No substitutions shall be made unless approved by the County Auditor. Contractor’s work-product shall be of sufficiently superior quality to maintain or enhance County’s status with credit rating agencies and the municipal obligations market place.

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. **Applicable Law and Venue.** 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 this Contract.

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

13. **Cost Disclosure and Written Reports.** Pursuant to Government Code section 7550, if the total cost of this agreement is over \$5,000, the Contractor shall include in all final document 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 document or written report. The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

14. **State Audit.** Pursuant to California Government Code section 10532, every County contract involving the expenditure of more than \$10,000 in public funds is subject to examination and audit by the State Auditor General for a period of three years after final payment under the contract. Contractor shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this agreement. The foregoing constitutes "records" for the purposes of this paragraph. Contractor shall maintain and preserve, until seven years after termination of this agreement, and permit the State of California or any of its duly authorized representatives, including the Comptroller General of the United States, to have access to and to examine and audit any pertinent books, documents, papers, and records of Contractor related to this agreement.

15. **Confidential Records**. No reports, information, documents or any other materials given to or prepared by Contractor under this agreement that the County requests in writing be kept confidential shall be made available to any individual or organization by Contractor without the prior written approval of County. Contractor and County shall ensure the confidentiality of any records that are required by law to be so maintained. Contractor is free to disclose such data as is publicly available.

Unless previously terminated pursuant to the provisions of Paragraph 5, Contractor's representation of County in a particular financial transaction will conclude and terminate upon Contractor's submission of a final invoice for services rendered in the particular financial matter. Following such conclusion and termination, any otherwise non-public information County has supplied to Contractor will be kept confidential in accordance with applicable rules of professional conduct.

Upon request, County's papers and property will be shipped to County at its own expense. Contractor's own files pertaining to any financial matter, which may include copies of County's papers, will be retained by Contractor. County understands that Contractor's administrative records; time and expense reports; personnel and staffing materials; credit and accounting records; and the documents containing Contractor's attorney work-product, mental impressions, notes, drafts of documents and legal and factual research, including investigative reports, shall be and remain Contractor's property and shall not be considered part of the client file. In addition, electronic documents such as Contractor's internal e-mails, documents containing or reflecting Contractor's internal deliberations or self-evaluations, and Contractor's internal data bases shall be and will remain Contractor's property and will not be considered part of the client file. All such documents retained by Contractor will be transferred to the person responsible for administering Contractor's records retention program. For various reasons,

including the elimination of storage expenses, Contractor reserves the right to destroy or otherwise dispose of any such documents or other materials retained by Contractor within a reasonable time after the termination of this engagement. In any event, all documents and other materials in Contractor's files may be discarded or destroyed, without further notice to County at any time after the seven-year anniversary of the conclusion of a particular financial matter assigned to Contractor.

16. **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:

Jim Erb
Auditor/Controller/Treasurer/Tax-Collector
County of San Luis Obispo
1055 Monterey Street, Room D220
San Luis Obispo, CA 93408

and to the Contractor:

Ann La Morena Rohlin, Sr. Counsel
Fulbright and Jaworski LLP, a member of
Norton Rose Fulbright
555 South Flower Street, 41st Floor
Los Angeles, California 90071

17. **Conflict of Interest**. Contractor and County have read and are aware of the provisions of Section 1090, et seq., and Section 87100, et seq., of the Government Code relating to conflicts of interest of public officers and employees. The parties are unaware of any financial or economic interest of any public officer or employee of the County relating to this agreement. Contractor 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 agreement and that no person having any such interest shall be employed by Contractor. It is further understood that if a financial interest does exist at the inception of the

agreement, the County may immediately terminate this agreement by giving written notice thereof. Contractor will comply with all applicable provisions of other laws pertaining to conflict of interest requirements. If the Contractor must declare a conflict of interest, the Contractor shall forthwith report the conflict, in writing, to the County and shall provide any additional details requested by the County in a timely manner. To the extent applicable, Contractor agrees to abide with Section 87200, et seq. of the Government Code during the term of this agreement.

18. **California Rules of Professional Conduct:** Contractor 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.

19. **Entire Agreement and Modification.** This agreement supersedes all previous contracts and constitutes the entire understanding of the parties hereto. 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 agreement and no others.

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

Approved by the Board of Supervisors on the date hereinabove set forth.

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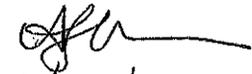
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COUNTY OF SAN LUIS OBISPO

CONTRACTOR:

By: _____
Chairman of the Board of Supervisors


Donald Hunt
Title: Partner Sr. Counsel

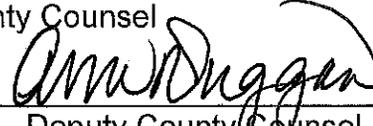
APPROVED AS TO FORM AND LEGAL EFFECT:

Date: 10-28-14

RITA L. NEAL
County Counsel

ATTEST:

Clerk of the Board of Supervisor

By: 
Deputy County Counsel

Date: 10/22/14