

CONTRACT ROUTING SHEET

Date Prepared: 10/9/07

Need Date: _____

PROCESSING DEPARTMENT:

Department: County Counsel
Dept. Contact: Louis B. Green
Phone #: (530) 621-5770
Department Head Signature: *Louis B. Green*

CONTRACTOR:

Name: Sidley, Austin LLP
Address: 555 California Street
San Francisco, CA 94104
Phone: (415) 449-9551

CONTRACTING DEPARTMENT: County Counsel

Service Requested: Legal Services for County

Contract Term: _____

Compliance with Human Resources Requirements? ()

Compliance verified by: _____

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: ✓ Disapproved: _____ Date: 11/29/07 By: ZBL
Approved: _____ Disapproved: _____ Date: _____ By: _____

Assignment

Date: 11/29/07
Atty: LBG
Index #: 070000
By: KM

FORWARD TO RISK MANAGEMENT? YES

RISK MANAGEMENT: (All contracts & MOU's except boilerplate grant funding agreements)

Approved: ✓ Disapproved: _____ Date: 11/29/07 By: *C. Costello*
Approved: _____ Disapproved: _____ Date: _____ By: _____

Approval contingent on receipt of insurance certificate and Risk Mgmt. Review

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Approved: _____ Disapproved: _____ Date: _____ By: _____
Approved: _____ Disapproved: _____ Date: _____ By: _____

RECEIVED
COUNTY COUNSEL
NOV 10 07

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as “County”) and Sidley Austin LLP, a limited liability partnership, duly qualified to conduct business in the State of California, whose principal place of business is 555 California Street, San Francisco, Ca 94104, (hereinafter referred to as “Attorney”);

WITNESSETH

WHEREAS, County has determined that it is necessary to obtain a consultant to provide legal services; and

WHEREAS, Attorney has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, County has determined that the provisions of these services provided by Attorney are in the public’s best interest and that these services, are more economically and feasibly performed by outside independent Consultants as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, County and Attorney mutually agree as follows:

ARTICLE I

Scope of Services: Attorney agrees to provide legal services to the County in connection with the issuance of bonds in connection with the County’s Missouri Flat Master Circulation and Funding Plan and the filing of a validation action in connection therewith. In particular, Attorney agrees to provide all necessary legal services to conduct preliminary research; prepare a Contribution Ordinance in accordance with the development agreements, the indenture, County Resolution authorizing issuance of

bonds, and related documents; attendance at a meeting of the Board of Supervisors at which said documents are considered; preparation and filing of a validation complaint and service/publication documents and develop the service list; draft the Memorandum of Points and Authorities in support of the validation judgment and make a court appearance as necessary to obtain the validation judgment. The scope of services anticipates an unopposed validation action. In the event there is a contest or appeal of the validation proceedings, a new scope of services and budget would need to be developed. The scope of work does not anticipate the preparation of standard disclosure documents, the standard set of closing documents and opinions, and preparation of an official statement, all of which will be the subject of an amended agreement at the time of issuance of the bonds.

ARTICLE II

Term: This Agreement shall become effective January 3, 2006, and shall continue in effect until the work contemplated is completed.

ARTICLE III

Compensation for Services: For services provided herein, County agrees to pay Attorney monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoice(s) detailing services rendered. For the purposes hereof, the billings for all attorneys shall be at a blended rate of \$495 per hour. The billing rate for paralegal services shall be \$195 per hour. Attorney shall also be entitled to reimbursement for out of pocket costs such as service fees, messenger and photocopying at a rate of \$0.15 per page. The total amount of this agreement shall not exceed \$90,000.00.

Attorney shall submit to County Counsel for review and approval an itemized statement of services rendered at periodic intervals of not less than one month and not more than three months. Such statement shall identify the nature of the services rendered, and specify the time expended in rendering such services, calculated in one-quarter (.25) hour segments. Simultaneously, Attorney shall submit a summary statement to County for payment processing. In Attorney's discretion, such statements need not be submitted until the total amount due exceeds Five Hundred Dollars (\$500.00).

ARTICLE IV

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE V

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Attorney shall act as Attorney only to County and shall not act as Attorney to any other individual or entity affected by this

Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Attorney's responsibilities to County during term hereof.

ARTICLE VI

Assignment and Delegation: Attorney is engaged by County for its unique qualifications and skills as well as those of its personnel. Attorney shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE VII

Independent Contractor/Liability: Attorney is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Attorney exclusively assumes responsibility for acts of its employees, associates and subconsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Attorney shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Attorney or its employees.

ARTICLE VIII

Representations of Attorney. Attorney and every employee thereof shall provide their services, advice and any reports in full compliance with all applicable law and professional standards. Attorney represents that it is specially trained, experienced, expert and competent to perform the services required under this Agreement, and that each individual providing legal services as a member in good standing of the State Bar and is licensed to practice in California. Further Attorney certifies that it will not accept representation in any matters, including litigation, under this Agreement if it or any employee thereof has any personal or financial interest therein.

Attorney certifies that it accepts this retention because it has the time, energy, skills and ability necessary to perform the duties required in an efficient, trustworthy, professional and businesslike manner. Attorney understand that time is if the essence of this agreement.

Attorney shall immediately notify County if any services to be performed under this Agreement involves an actual or potential conflict of interest, financial or otherwise under the California Rules of Professional Conduct. Attorney shall not engage in any activity under this Agreement that involves any actual or potential conflict of interest under such Rules unless Attorney first makes a full and complete disclosure of all relevant facts and obtains a written waiver of such conflict in advance from County. County has been advised that Attorney represents numerous other clients including other public entities in the state of California and that many of these clients rely on Attorney

for general representation. It may develop in the future that an adverse relationship may develop between County and one of Attorney's other clients. If Attorney is not representing County in that matter and the matter in which the County and the other client have adverse interests is not substantially related to Attorney's representation of County under this Agreement, County agrees that Attorney may represent the other client. With respect to any other conflict or potential conflict situation that Attorney may bring to the attention of County under this paragraph, County agrees that it will give practical and reasonable consideration to any request from Attorney for consent to Attorney's handling of the other matter giving rise to the conflict or potential conflict, but nothing herein shall require County to provide consent to a conflict that, under the California Rules of Professional Conduct, is one to which a client may choose not to consent.

ARTICLE IX

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE X

Default, Termination and Cancellation:

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Attorney.
- C. Ceasing Performance: County may terminate this Agreement in the event Attorney ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part seven (7) calendar days upon written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Attorney, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Attorney shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

ARTICLE XI

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

Louis B. Green
County Counsel
330 Fair Lane
Placerville, CA 95667

or to such other location as the County directs.

Notices to Attorney shall be addressed as follows:

Sidley Austin LLP
555 California Street
San Francisco, CA 94104
ATTN: Eric D. Tashman, Esq.

or to such other location as the Attorney directs.

ARTICLE XII

Indemnity: Attorney shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner, and shall be liable for its own negligence and the negligent act of its employees.

A. Indemnification – Professional Malpractice

Attorney is skilled in the professional calling necessary to the services and duties agreed to be performed and County relies upon the skills and knowledge of Attorney. Attorney shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Attorney agrees to indemnify and hold harmless County, its officers and employees, from any and all liability, losses, damages, costs and expenses determined by a court of law to have been proximately caused by any professional malpractice of Attorney, their officers, employees, agents or subcontractors in the performance of services under this Agreement, provided that nothing herein is intended to deprive Attorney of the benefit of the application of the doctrine of comparative fault as it would otherwise be applicable to reduce Attorney's liability as a result of the negligence or other misconduct of the County and any of its officers, employees or agents.

B. Indemnification – Personal Injury or Death, or Property Damage

The Attorney shall defend, indemnify and hold the County, its officers, agents and employees, harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees and the public, or damage to property or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Attorney's willful or negligent acts (active or passive) or omissions by Attorney's officers, employees or agents hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Attorney, subconsultant(s) and employee(s) or any of these, except for the sole or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Attorney to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XIII

Insurance: Attorney shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Attorney maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Attorney as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000.00 is required in the event motor vehicles are used by the Attorney in the performance of the Agreement.
- D. In the event Attorney is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence. For the purposes of this Agreement, professional liability (~)(is)(is not) required.
- E. Attorney shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Attorney agrees that the insurance required above shall be in effect at all times during the term of this Agreement.

In the event said insurance coverage expires at any time or times during the term of this Agreement, Attorney agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Attorney agrees that no work or services shall be performed prior to the giving of such approval. In the event the Attorney fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;

2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
- I. The Attorney'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 in excess of the Attorney's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Attorney shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Attorney's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Attorney cannot provide an occurrence policy, Attorney shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

ARTICLE XIV

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Attorney under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XV

Interest of Attorney: Attorney covenants that Attorney presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Attorney further covenants that in the performance of this Agreement no person having any such interest shall be employed by Attorney.

ARTICLE XVI

California Residency (Form 590): All independent Consultants providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certify that they have a permanent place of business in California. The Attorney will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7%) percent of each payment made to the Attorney during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XVII

Taxpayer Identification Number (Form W-9): All independent Consultants or Corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XVIII

Administrator: The County Officer or employee with responsibility for administering this Agreement is Louis B. Green, County Counsel, or successor.

ARTICLE XIX

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XX

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXI

Venue: Any dispute resolution action rising out of this Agreement, including, but not limited to, litigation, mediation or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Attorney waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XXII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

Requesting Department Concurrence:

By: _____ Dated: _____
Louis B. Green, County Counsel

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____
Helen Baumann, Chairman
Board of Supervisors
"County"

ATTEST:
Cindy Keck
Clerk of the Board of Supervisors

By: _____ Dated: _____
Deputy Clerk

-- CONSULTANT--

Dated: _____

SIDLEY AUSTIN LLP
A CALIFORNIA LIMITED
LIABILITY PARTMERSHIP

By: _____

“Attorney”