

**Project:** Certificate of Participations (2008 Refinancing Project)

**Administering Agency:** Placer County Treasurer Tax Collector

**Contract No.**

**Contract Description:**

PROFESSIONAL LEGAL SERVICES CONTRACT FOR SPECIAL COUNSEL SERVICES RELATED TO THE ISSUANCE OF CERTIFICATES OF PARTICIPATION TO REFUND THE \$13,200,000 CERTIFICATES OF PARTICIPATION (JUVENILE DETENTION FACILITY AND JAIL KITCHEN REFUNDING)

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Auburn, California, as of June 1, 2008, by and between the County of Placer, ("County"), and Quint & Thimmig, LLP, ("Consultant"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the services described in Exhibit A. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A.

2. **Payment.** County shall pay Consultant for services rendered pursuant to this Agreement at the time and in the amount set forth in Exhibit B. The payment specified in Exhibit B shall be the only payment made to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all billings for said services to County in the manner specified in Exhibit B; or, if no manner be specified in Exhibit B, then according to the usual and customary procedures which Consultant uses for billing clients similar to County.

3. **Facilities, Equipment and Other Materials, and Obligations of County.** Except as set forth in Exhibit C, Consultant shall, at its sole cost and expense, furnish all facilities, equipment, and other materials, which may be required for furnishing services pursuant to this Agreement. County shall furnish Consultant only those facilities, equipment, and other materials, and shall perform those obligations listed in Exhibit C according to the terms and conditions set forth in Exhibit C.

4. **General Provisions.** The general provisions set forth in Exhibit D are part of this Agreement. Any inconsistency between said general provision and any other terms or conditions of this Agreement shall be controlled by the other term or condition insofar as it is inconsistent with the general provisions.

5. **Exhibits.** All exhibits referred to herein are attached hereto and by this reference incorporated herein.

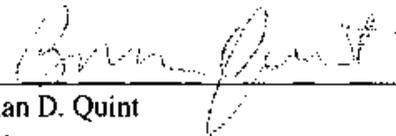
6. **Time for Performance.** Time is of the essence, and, subject to County's compliance with Exhibit C and to the provisions of paragraph 3 of Exhibit D, failure of Consultant to perform any services within the time limits set forth in Exhibit A shall constitute material breach of this contract.

Executed as of the day first above stated:

COUNTY OF PLACER

By: \_\_\_\_\_  
County Executive Officer

QUINT & THIMMIG LLP, Consultant

By:  \_\_\_\_\_  
Brian D. Quint  
Partner

Approved As to Form

\_\_\_\_\_  
County Counsel

## EXHIBIT A

### SCOPE OF SERVICES

Quint & Thimmig, LLP will provide bond counsel services to the County in connection with the issuance of the **Certificate of Participations (2008 Refinancing Project)** to refund the \$13,200,000 Certificates of Participation (Juvenile Detention Facility and Jail Kitchen Refunding) as specified by, and at the direction of the County.

Quint & Thimmig, LLP will perform and render all legal services in connection with said certificate issue, including, but not limited to, the following:

- (a) Assist the COUNTY's financing team in the review and development of the Bond Issue.
- (b) Consult and confer with appropriate representatives of the COUNTY and its counsel ("County Counsel") and, as appropriate, other special consultants to the COUNTY concerning the proposed Bond Issue and its timing, terms and structure, including considerations in relation to California law, Federal tax law, Federal securities law, and general public finance law as they affect the proposed Bond Issue.
- (c) Assist the financing team in the preparation of a timetable setting forth the actions required to accomplish the Bond Issue, including allocation of responsibility therefor.
- (d) Prepare all documents of a legal nature associated with the sale, execution and delivery of the Certificates (excepting the preliminary and final Official Statements and the continuing disclosure certificate, each to be prepared by other members of the financing team), including preparation of resolutions, agreements, notices, affidavits, certifications and other documents associated with the Bond Issue.
- (e) Review, in consultation with other financing team members, the preliminary and final Official Statements, the continuing disclosure certificate and such other documentation as may be required to insure that the Certificates meet all legal requirements for a tax exempt status.
- (f) Prepare and issue ATTORNEYS' customary legal opinion approving the legality of the proceedings relating to the Bond Issue undertaken in accordance with ATTORNEY's advice, including an opinion on the tax-exempt status of interest on the Certificates and an opinion as to the accuracy in all material respects of the description of the financing documents and the summaries thereof included in the Official Statement; provided that ATTORNEYS will require a statement in the Official Statement to the effect that ATTORNEYS undertake no responsibility for the accuracy, completeness or fairness of the Official Statement

or other offering material relating to the Certificates and express no opinion with respect thereto.

(g) Review any insurance arrangements entered into in connection with the Bond Issue.

(h) Review, advise, and assist in connection with the negotiation and preparation and entering into of a certificate purchase agreement between the COUNTY and the original purchaser thereof in connection with the sale of the Certificates.

(i) Examine the proofs of certificates, prepare the final closing papers required to effect delivery of the Certificates and organize and attend the certificate closing.

(j) Perform other services associated with the legality of a public financing program and the presentation of the program to the COUNTY'S Board of Supervisors when such services are requested by the COUNTY. This task would include, but not be limited to, appearances before the COUNTY Board at the meeting at which authorization of the Bond Issue is sought and participation in meetings and consultations with the financing team.

(k) Prepare and provide a complete transcript of the conduct of the proceedings constituting the Bond Issue for the use of the COUNTY.

ATTORNEYS and COUNTY acknowledge that County Counsel renders day-to-day and ongoing legal services to the COUNTY. ATTORNEYS shall circulate documents to and coordinate its services with County Counsel to the extent requested by COUNTY or County Counsel. ATTORNEYS shall be entitled to assume that County Counsel has reviewed all documents and matters submitted to the Board of Supervisors for adoption or approval or to officers of COUNTY for execution prior to such adoption, approval or execution, and ATTORNEYS shall submit documents in a timely manner to permit such review.

Brian Quint shall be directly responsible for providing documents, advice, consultations, and other services specified above or requested by the COUNTY in connection with the issue. Other personnel will be made available as required.

ATTORNEYS services are limited to those specifically set forth above. ATTORNEYS services do not include representation of COUNTY or any other party to the transaction in any litigation or other legal or administrative proceeding involving any of the Certificates, the project or any related matter. Additionally, ATTORNEYS services do not include any responsibility for the preparation or content of the Official Statement (other than preparation of a summary of the major legal documents and a summary of the portion of the opinion to be rendered by ATTORNEYS concerning certain tax matters) or the preparation or content of the Certificate Purchase Agreement, if any. ATTORNEYS services also do not include any responsibility for state blue sky laws or for title to perfection of security interests in real or personal property. ATTORNEYS services do not include any financial advice or analysis. ATTORNEYS will not be responsible for the services performed or acts or omissions of any cocertificate counsel or

other participant. Also, ATTORNEYS services will not extend beyond the execution and delivery of the Certificates and will not, for example, include services related to rebate compliance or continuing disclosure.

## EXHIBIT B

### PAYMENT FOR SERVICES RENDERED

Compensation for the foregoing services shall be as follows:

**Compensation:**

Quint & Thimmig LLP will be paid a legal fee of \$50,000.00, inclusive of all out of pocket expenses.

**Payment:**

The compensation referenced in this Exhibit B shall be payable from the proceeds of the Certificates, and the COUNTY shall have no obligation to make payment of such services from any other source of funds. The compensation referenced in this Exhibit B shall be contingent upon the successful sale and delivery of the Certificates. If the Certificates are not sold and delivered, no payment will be owed to Quint & Thimmig LLP

**EXHIBIT C**

**FACILITIES, EQUIPMENT, AND OTHER MATERIALS,  
AND OBLIGATIONS OF COUNTY**

The County has no obligation to provide facilities or equipment to Quint & Thimmig, LLP.

The County will make all pertinent information and data available to Quint & Thimmig, LLP, as necessary to complete the work described in Exhibit A.

## EXHIBIT D

### GENERAL PROVISIONS

1. **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of the County. County shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement. County shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement.

2. **Licenses, Permits, Etc.** Consultant represents and warrants to County that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant represents and warrants to County that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

3. **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Consultant's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

4. **Insurance.** Consultant shall file with County a Certificate of Insurance, with companies acceptable to County, with a Best's Rating of no less than A:VII showing the following coverage:

A. **Workers' Compensation and Employers' Liability Insurance**

1) Workers' Compensation Insurance shall be provided, as required, by any applicable law or regulation. Employers' liability insurance shall be provided in amounts not less than five hundred thousand dollars (\$500,000) each accident for bodily injury by accident, five hundred thousand dollars (~~\$500,000~~) policy limit for bodily injury by disease, and five hundred thousand dollars (\$500,000) each employee for bodily injury by disease.

2) Consultant shall require all SUBCONSULTANTS to maintain adequate Workers' Compensation Insurance. Certificates of Workers Compensation shall be filed forthwith with the County upon demand.

B. **General Liability Insurance**

1) Comprehensive General Liability or Commercial General Liability insurance shall be provided covering all operations by, or on behalf of Consultant, covering bodily injury liability and property damage liability for the limits of liability indicated below and including

coverage for contractual liability insuring the obligations assumed by Consultant in this Agreement.

- 2) One of the following forms is required:
  - a) Comprehensive General Liability;
  - b) Commercial General Liability (Occurrence); or
  - c) Commercial General Liability (Claims Made).

3) If Consultant carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- a) One million dollars (\$1,000,000) each occurrence;
- b) One million dollars (\$1,000,000) aggregate.

- 4) If Consultant carries a Commercial General Liability (Occurrence) policy:

- a) The limits of liability shall not be less than:
  - i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
  - ii) One million dollars (\$1,000,000) for Products-Completed Operations;
  - iii) One million dollars (\$1,000,000) General Aggregate.

b) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately to this contract, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

- 5) Special Claims Made Policy Form Provisions:

Consultant shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of County, which consent, if given, shall be subject to the following conditions:

- a) The limits of liability shall not be less than:
  - i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);

ii) One million dollars (\$1,000,000) aggregate for Products-Completed Operations;

iii) One million dollars (\$1,000,000) General Aggregate.

b) The insurance coverage provided by Consultant shall contain language allowing consultant to purchase coverage for up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy. And, Consultant shall upon expiration of such coverage, either replace such coverage with comparable coverage or exercise such option.

C. Endorsements

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

1) "The County of Placer, its officers, agents, employees and volunteers, are to be covered as insureds for all liability arising out of operations, or on behalf of, the additional insured in the performance of this Agreement."

2) "The insurance provided by the Consultant, including any excess liability or umbrella form coverage, is primary coverage to the County with respect to any insurance or self-insurance programs maintained by County, and no insurance held or owned by County shall be called upon to contribute to a loss."

D. Automobile Liability Insurance

1) Automobile Liability insurance shall be provided covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

2) Covered vehicles should include owned (if any are owned by Consultant), non-owned, and hired automobiles/trucks.

E. Professional Liability Insurance (Errors and Omissions)

1) Professional Liability Insurance for Errors and Omissions coverage shall be provided in the amount of not less than two million dollars (\$2,000,000) in aggregate.

2) The insurance coverage provided by Consultant shall contain language allowing Consultant to purchase coverage for up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

5. **Indemnity.** Consultant shall indemnify and hold harmless County from any and all damages or liability arising from this Agreement and resulting from negligent acts or omissions, malpractice or intentional acts of Consultant in rendering the services set forth in this Agreement.

6. **Consultant Not Agent.** Except as County may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of County in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind County to any obligation whatsoever.

7. **Assignment Prohibited.** Consultant may assign its rights and obligations under this Agreement only upon the prior written approval of County, said approval to be in the sole discretion of County.

8. **Personnel.**

A. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that County, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Consultant to perform services pursuant to this Agreement, including those members of the Project Team as explained below, Consultant shall remove any such person immediately upon receiving notice from County of the desire of County for removal of such person or persons.

B. Notwithstanding the foregoing, if specific persons are designated as the "Project Team" in Exhibit A, Scope of Services, Consultant agrees to perform the work under this agreement with those individuals identified. Reassignment or substitution of individuals or subconsultants named in the Project Team by Consultant without the prior written consent of County shall be grounds for cancellation of the agreement by County, and payment shall be made pursuant to Paragraph 10 Termination only for that work performed by Project Team members.

9. **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. All products of whatsoever nature which Consultant delivers to County pursuant to this Agreement shall be prepared in a substantial first class and workmanlike manner and conform to the standards or quality normally observed by a person practicing in Consultant's profession.

10. **Termination.**

A. County shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to Consultant. In the event County shall give notice of termination, Consultant shall immediately cease rendering service upon receipt of such written notice, pursuant to this Agreement. In the event County shall terminate this Agreement:

1) Consultant shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, Photostatting, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

2) County shall have full ownership and control of all such writings delivered by Consultant pursuant to this Agreement.

3) County shall pay Consultant the reasonable value of services rendered by Consultant to the date of termination pursuant to this Agreement not to exceed the amount documented by Consultant and approved by County as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed the amount of the agreement specified in Exhibit B, and further provided, however, County shall not in any manner be liable for lost profits which might have been made by Consultant had Consultant completed the services required by this Agreement. In this regard, Consultant shall furnish to County such financial information as in the judgment of the County is necessary to determine the reasonable value of the services rendered by Consultant. The foregoing is cumulative and does not affect any right or remedy which County may have in law or equity.

B. Consultant may terminate its services under this Agreement upon thirty (30) working days advance written notice to the County.

11. **Non-Discrimination**. Consultant shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex in contravention of the California Fair Employment and Housing Act, Government Code section 12900 *et seq.*

12. **Records**. Consultant shall maintain, at all times, complete detailed records with regard to work performed under this agreement in a form acceptable to County, and County shall have the right to inspect such records at any reasonable time. Notwithstanding any other terms of this agreement, no payments shall be made to Consultant until County is satisfied that work of such value has been rendered pursuant to this agreement. However, County shall not unreasonably withhold payment and, if a dispute exists, the withheld payment shall be proportional only to the item in dispute.

13. **Ownership of Information**. All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of County, and Consultant agrees to deliver reproducible copies of such documents to County on completion of the services hereunder. The County agrees to indemnify and hold Consultant harmless from any claim arising out of reuse of the information for other than this project.

14. **Waiver.** One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Agreement shall not operate as a waiver of any subsequent breach or default by the other party.

15. **Conflict of Interest.** Consultant certifies that no official or employee of the County, nor any business entity in which an official of the County has an interest, has been employed or retained to solicit or aid in the procuring of this agreement. In addition, Consultant agrees that no such person will be employed in the performance of this agreement without immediately notifying the County.

16. **Entirety of Agreement.** This Agreement contains the entire agreement of County and Consultant with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party which is not contained in this Agreement shall be binding or valid.

17. **Attorney's Fees.** If any party to this Agreement commences legal proceedings to enforce any of its terms or for damages for its breach, the prevailing party shall be entitled to recover reasonable attorney's fees, including those incurred on appeal, if any.

18. **Governing Law.** This Agreement is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. Any legal proceedings on this agreement shall be brought under the jurisdiction of the Superior Court of the County of Placer, State of California, and Consultant hereby expressly waives those provisions in California Code of Civil Procedure §394 that may have allowed it to transfer venue to another jurisdiction.