

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (Rev 06/03)

AGREEMENT NUMBER S0840043
REGISTRATION NUMBER 838001093522424

- This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME Department of Personnel Administration
CONTRACTOR'S NAME Kronick, Moskovitz, Tiedemann & Girard
- The term of this Agreement is: November 1, 2008 through June 30, 2009
- The maximum amount of this Agreement is: \$ 50,000.00
Fifty Thousand Dollars and Zero Cents
- The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	2 Pages
Exhibit B – Budget Detail and Payment Provisions	1 Page
Attachment 1 – Fee Schedule	1 Page
Exhibit C – General Terms and Conditions	4 Pages
Exhibit D – Special Terms and Conditions	1 Page
Exhibit E – Additional Provisions	3 Pages
Exhibit F – Notice of Contractor Evaluation	1 Page

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR	
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) Kronick, Moskovitz, Tiedemann & Girard	
BY (Authorized Signature) 	DATE SIGNED (Do not type) 12/13/08
PRINTED NAME AND TITLE OF PERSON SIGNING Laura Izon Powell, Shareholder & Vice President	
ADDRESS 400 Capitol Mall, 27 th Floor Sacramento, CA 95814	
STATE OF CALIFORNIA	
AGENCY NAME Department of Personnel Administration	
BY (Authorized Signature) 	DATE SIGNED (Do not type) 12/30/08
PRINTED NAME AND TITLE OF PERSON SIGNING Debbie Endsley, Chief Deputy Director	
ADDRESS 1515 S Street, North Building, Suite 400; Sacramento, CA 95811	

California Department of General Services Use Only
D/GS approval not required per S.A.M. Sec. 1215.
<input type="checkbox"/> Exempt per:

**EXHIBIT A
(Standard Agreement)**

SCOPE OF WORK

1. The Contractor agrees to provide the State of California, Department of Personnel Administration (DPA) legal assistance regarding any matter assigned to the Contractor including but not limited to litigation services, advice, and consultation.

The Contractor will draft and review bargaining proposals and contract language as needed.

The Contractor will upon request conduct litigation before any court or administrative venue.

2. All information supplied to, and all work processed or completed by the Contractor and its agents shall be held to be confidential and will not be disclosed to anyone other than the Department, or its designees, except as required by law or consented by the Department.
3. The DPA shall be provided with a copy of documents, briefs, research memos, etc. prepared by the Contractor in rendering services under this agreement.
4. The services shall be performed at locations to be determined throughout the state, including but not limited to Sacramento County.
5. The project representatives during the term of this agreement will be:

State Agency: Department of Personnel Admin.	Contractor: Kronick, Moskovitz, Tiedemann & Girard
Name: Warren C. Stracener	Name: Laura Izon Powell
Phone: (916) [REDACTED]	Phone: (916) [REDACTED]
Fax: (916) [REDACTED]	Fax: (916) [REDACTED]

Direct all inquiries to:

State Agency: Department of Personnel Admin.	Contractor: Kronick, Moskovitz, Tiedemann & Girard
Section/Unit: Legal	Section/Unit:
Attention: Warren C. Stracener	Attention: Laura Izon Powell
Address: 1515 S Street, No. Bldg., Suite 400	Address: 400 Capitol Mall, 27 th Floor
Phone: (916) [REDACTED]	Phone: (916) [REDACTED]
Fax: (916) [REDACTED]	Fax: (916) [REDACTED]

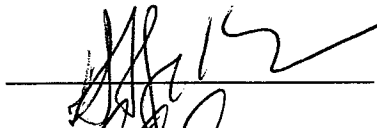

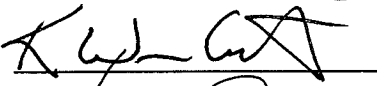

6. This Agreement may be amended as to time, fees and/or scope of services at the discretion of DPA and with the mutual consent of the Contractor. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties

7. Authorized Persons List

The following persons are designated to provide directions and instructions to the Contractor pursuant to this service agreement. Upon any change of the authorized personnel, the Department shall inform the Contractor in writing.


**EXHIBIT A
(Standard Agreement)**

DPA

Name and Title	Signature	Date
David A. Gilb Director		<u>1/7/09</u>
Debbie Endsley Chief Deputy Director		<u>12/30/08</u>
K. William Curtis Chief Counsel		<u>1/7/09</u>
Warren C. Stracener Deputy Chief Counsel		<u>1/8/09</u>

Contractor

Only the following person(s) are designated to act on behalf of the Contractor for purposes of amending, modifying and/or terminating this agreement. The Contractor shall notify DPA in writing of any change in the designated authorized personnel listed below.

Name and Title	Signature	Date
Laura Izon Powell Shareholder & Vice President		<u>12/13/08</u>
_____	_____	_____

**EXHIBIT B
(Standard Agreement)**

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices by DPA, the Contractor will be compensated for actual expenditures incurred in accordance with the rates specified herein and made a part of this Agreement (Exhibit B – Attachment 1).
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears for review and approval for payment to:

Department of Personnel Administration
Legal Division – Curt Stracener
1515 S Street, No. Bldg., Suite 400
Sacramento, CA 95811

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for this Agreement shall be of no further force and effect. In this event, except for services already rendered by Contractor prior to termination of this Agreement, DPA shall have no liability to pay any funds to the Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any services under this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this Agreement, DPA shall have the option to either cancel this Agreement with no liability occurring to DPA, or offer an agreement amendment to Contractor to reflect the reduced amount. Nothing in this section is intended to limit DPA's right to cancel this Agreement at anytime for reasons unrelated to funding and/or budget appropriations.
- C. Neither the State nor DPA shall be required to authorize any payment to the Contractor during such time as the Budget Act covering that fiscal year has not been approved by the Legislature and signed into law by the Governor.

3. Prompt Payment Clause

- A. Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

**EXHIBIT B
(Standard Agreement)**

ATTACHMENT 1

FEE SCHEDULE

COST ESTIMATES/LITIGATION BUDGET

At the DPA's discretion, the Contractor may be required to submit a written estimated budget of costs and professional fees for services to be provided regarding any work assignment.

*The Contractor will be reimbursed reasonable expenses for transportation (airfare, mileage reimbursement and car rental), meals, parking, and lodging actually incurred. The Contractor will provide copies of receipts for expense claims.

EXHIBIT C
(Standard Agreement)

GENERAL TERMS AND CONDITIONS

1. **APPROVAL**: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT**: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT**: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT**: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any non-confidential, non-privileged records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION**: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. **DISPUTES**: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE**: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. **INDEPENDENT CONTRACTOR**: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

EXHIBIT C
(Standard Agreement)

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (Pub. Contract Code §§ 10233, 10308.5, 10354)
10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 1005 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
12. TIMELINESS: Time is of the essence in this Agreement.
13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

EXHIBIT C
(Standard Agreement)

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

EXHIBIT C
(Standard Agreement)

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

**EXHIBIT D
(Standard Agreement)**

SPECIAL TERMS AND CONDITIONS

1. **PRELITIGATION DISPUTE RESOLUTION PROCEDURES:** Any claim that the Contractor may have regarding the performance of this Agreement, including, but not limited to, claims for additional compensation, extension of time, shall be submitted to the Department of Personnel Administration, Legal Division within thirty (30) days of discovery of the problem. Within ten (10) business days of this filing, the Chief Counsel or Designee shall meet with the Contractor and assigned attorney for purposes of resolving the dispute. Should the Contractor disagree with the decision, the Contractor may appeal to the DPA Director or Designee within fifteen (15) business days of the decision. The DPA Director, or Designee, shall meet with the Contractor to review the issues raised. A written decision signed by the Director or Designee shall be returned to the Contractor within thirty (30) days of the meeting. The decision of the DPA Director or Designee shall be final except that nothing in this section shall constitute a waiver by the Contractor to seek enforcement of any right under this contract after the above dispute resolution procedures have been exhausted.

2. **CONTINGENCY FEE:** The Contractor warrants, by execution of this Agreement, that no person or selling agency shall be employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingency fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall have the right to annul this Agreement without liability, pay only for the value of the work actually performed, or in its discretion, to deduct from the contract work actually performed, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingency fee.

3. **FORCE MAJEURE:** The parties' performance under this Contract is subject to government regulation, or governmental decision that restricts travel, acts of God, terrorism, disaster, strikes, civil disorder, curtailment of transportation facilities, or any other emergency beyond the parties' control, making it inadvisable, illegal or which materially affects a party's ability to perform its obligations under this contract.

EXHIBIT E
(Standard Agreement)

ADDITIONAL PROVISIONS

1. **INSURANCE REQUIREMENTS:** In accordance with (Public Contract Code Section (10353.5)
The Contractor shall:

- Agree to adhere to legal cost and billing guidelines designated by the State
- Adhere to litigation plans designated by the state agency
- Adhere to case phasing of activities designated by the state agency
- Submit and adhere to legal budgets as designated by the state agency
- Maintain legal malpractice insurance in an amount not less than the amount designated by the state agency
- Submit to legal bill audits and law firm audits if requested by the state agency. The audits may be conducted by employees and designees of the state agency or by any legal cost control providers retained by the state agency for purpose.
- Submit to a legal cost and utilization review, as determined by the state agency.

Coverage needs to be in force for complete term of contract. If insurance expires during the term of the contract, a new certificate must be received by DPA ten (10) days prior to the expiration of this insurance. This new insurance must still meet the terms of the original contract.

2. **BUSINESS & PROFESSIONS CODE; SECTION 6072:** A certification by the contracting law firm that the firm agrees to make a good faith effort to provide, during the duration of the contract, a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of either 30 multiplied by the number of full-time attorneys in the firm's offices in the state, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10 percent of its contract with the state.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the state for legal services.

3. **CONFLICT OF INTEREST:** Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- a. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- b. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

EXHIBIT E
(Standard Agreement)

Former State Employees (Pub. Contract Code §10411):

- a. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- b. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420).

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e)).

4. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
5. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
6. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
7. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:
 - a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
 - b. "Doing business" is defined in Revenue and Tax Code Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
 - c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

EXHIBIT E
(Standard Agreement)

8. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be:
(1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

9. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

**EXHIBIT F
(Standard Agreement)**

NOTICE OF CONTRACTOR EVALUATION

Within sixty (60) days after the completion of this Agreement, the Contract Manager shall complete a written evaluation of the Contractor's performance under this Agreement. The evaluation shall be prepared on Contract/Contractor Evaluation form (STD 4), and maintained in the Agreement file. If the Contractor did not satisfactorily perform the work, a copy of the evaluation will be sent to the Department of General Services, Office of Legal Services, and to the Contractor within 15 working days of the completion of the evaluation. (PCC 10367; 10369; 10370).