



Agenda Item Number: 6-6-13.6C

**SANDOVAL COUNTY
BOARD OF COUNTY COMMISSIONERS**

Date of Commission Meeting:

June 6, 2013

Division / Elected Office:

Office of the County Manager

Staff Contact:

Phillip Rios, County Manager

Title of Item:

Professional Services Agreement - Financial Advisory Services

Action Requested:

Motion to Approve a Professional Services Agreement between Sandoval County and First American Financial Advisors, Inc., for Financial Advisory Services

Summary:

On May 2, 2013 the Commission awarded the bid for Financial Advisory Services to First American Financial Advisors, Inc. The County Manager and Treasurer mutually agree to the terms set forth in this agreement and have negotiated the terms with Mr. Rob Burpo, President, First American Financial Advisors, Inc. The effective date of the agreement is July 1, 2013 to June 30, 2016.

Attachments:

Professional Services Agreement

FISCAL IMPACT

Services are paid for with Investment Funds.



Agenda Item Number: 6-6-13.6C

STAFF ANALYSIS SUMMARY

County Manager:

Recommend Board of County Commission approval. PPR 5/29/2013

**Initiating Elected Official /
Division Director:**

The Treasurer appreciates working closely with the County Manager during the negotiation of this this contract. The Treasurer also looks forward to reviewing the performance of this contract in one year to assure the best outcome for the County and taxpayers. LM via email 5/31/13

Legal:

Approved as to form. PFT 5/29/2013

Finance:

Recommend Approval CCH 5/29/13

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
SANDOVAL COUNTY
AND
FIRST AMERICAN FINANCIAL ADVISORS, INC.**

THIS AGREEMENT ("Agreement") is entered into this ____ day of _____, 2013, by and between Sandoval County, New Mexico (the "County") and First American Financial Advisors, Inc. (the "Firm").

WHEREAS, the Board of County Commissioners of Sandoval County (the "Board") and the Sandoval County Treasurer (the "Treasurer") have determined it is in the County's best interest to continue to improve the manner in which the Investment Funds are managed and invested; and

WHEREAS, LPL Financial Services ("LPL") represents that it is registered as an Investment Advisor under the Investment Advisor's Act of 1940, as amended, and the New Mexico Securities Act of 1986; and

WHEREAS, the Firm is a corporation formed pursuant to the laws of the State of New Mexico with its principal place of business in Albuquerque, New Mexico; and

WHEREAS, Robert M. Burpo is an Investment Advisor Representative to LPL, is president of the Firm, and is registered and licensed with FINRA and the New Mexico Securities Division to conduct the business required under this Agreement.

IT IS, THEREFORE, MUTUALLY AGREED BETWEEN THE PARTIES:

1. SCOPE OF SERVICES

- A. The Firm will work with the Board, the Treasurer and County Administration to assure all investments managed under the Firm and LPL fall within the guidelines of the most current Investment Policy approved by the Board. The Investment Policy sets forth the investment parameters for the Investment Funds, reporting and investment requirements, authorities the Financial Advisor, investment brokers and any money or other management firm(s) shall operate under, and what authorities and responsibilities the Board, serving as the Sandoval County Board of Finance, and the Treasurer shall have. The Firm will provide the County with recommendations for amendments and updates to the Investment Policy as needed.
- B. The Firm will organize and perform workshops for the Board and the County Administration, as requested, on the basics of investing in the various financial markets and how they operate. The Firm will provide County officials with

asset allocation models, including historical price and market volatility factors, as a part of this educational process.

- C. The Firm is equipped with in-house and has external resources, including LPL, to evaluate the performance of money managers throughout the United States. The Firm will assist the Treasurer, using these various resources, in selecting money managers that will best fit the County's investment parameters, as set forth in the Investment Policy. Any money managers selected by the Treasurer will not be proprietary (owned in whole or part) by the Firm or LPL.
- D. The Firm shall make every reasonable effort to assure each investment management firm contracted by the Firm and Treasurer conforms to and abides by the investment restrictions set forth in the Investment Policy. The Firm shall promptly notify the Treasurer in the event that any individual investment management firm retained by the Treasurer is not in compliance with said restrictions. The Firm shall submit to the Treasurer no less than on a quarterly basis a written valuation of the Investment Funds managed under the Firm or LPL. The Firm shall coordinate the investment of funds and distribution of these funds with the County's fiscal requirements under the Spending Policy set forth in the Investment Policy, if any.
- E. The Firm, through LPL, shall provide to the Treasurer on-line access to information regarding the Investment Accounts it holds, with access secured through the use of Personal Identification Numbers (PIN) and other security measures assigned by the Treasurer to its designees.
- F. Unless otherwise agreed to by the Treasurer, or its designee, the Firm shall be required to submit no less than monthly, quarterly and annually written reports (based on the County's fiscal year and quarters) together with interpretive and explanatory data sufficient to keep the Board and Treasurer thoroughly advised as to the status of investments managed by the Firm and LPL. Said reports shall be presented to the Treasurer, Investment Committee and Board at its County offices, unless otherwise agreed to by the Treasurer or Board according to the authority given under the Investment Policy. The Treasurer may require the presence of a representative of the Firm to deliver and to provide further explanation of said report. LPL shall also provide month end statements reflecting portfolio valuations, securities activities and earnings received or accrued.
- G. The Firm shall at no time receive, retain or physically control any cash, securities or other assets forming any part of the Investment Funds. All cash, securities or other assets forming the Investment Funds under the Firm and LPL shall be maintained and held exclusively for the benefit of the County by LPL.

- H. The Firm shall provide other financial services as agreed to by the parties hereto including but not limited to the services referenced in Appendix D - Cost Response Form (attached hereto as **Attachment 1**).
- I. The Firm shall communicate and provide timely response to the Treasurer regarding investments, county reports and other financial services.
- J. The Firm shall provide to the Treasurer and County on a monthly basis an expense report of all fees for all services provided (i.e. bonding expenses, trading fees, management fees) to Sandoval County.
- K. The Firm agrees to be bound by all provisions of the Investment Policy.

2. COMPENSATION

As compensation for the services set forth in the Scope of Services, the County shall pay the Firm an annual fee equal to forty hundredths of one percent (.0040% or 40 basis points) of the value of the Investment Funds managed or overseen by the Firm and held by LPL. The County shall pay the Firm its fee, to be prorated and paid on a quarterly basis, and said fee shall be deducted quarterly pro-rata from the Investment Funds managed by the Firm or LPL.

3. COUNTY OBLIGATION

- A. The County shall provide all information and documentation necessary for the orderly performance of the duties set forth in this Agreement.
- B. In the event an individual investment management firm retained by the County and managed by the Firm and LPL makes an investment that does not fall within the parameters for investment described in the Investment Policy, the Treasurer hereby grants authority to the Firm to effect cancellation of said investment or trade.
- C. The County further authorizes the Firm to consult with the individual investment managers, in conjunction with the Treasurer, to achieve investment goals as set forth in the Investment Policy.

4. TERM AND SUBSEQUENT RENEWAL

This Agreement shall become effective on the date of execution by all parties and shall terminate on June 30, 2016, unless terminated pursuant to Section 5. Under the provisions of NMSA Section 13-1-1 (1984) et. seq., this Agreement may be renewed on a yearly basis, with approval by the Treasurer, for a total term no greater than three (3) years.

5. TERMINATION

This Agreement may be terminated by either party upon thirty (30) days prior written notice to the other by certified mail, return receipt requested.

6. ASSIGNMENT

Neither the County nor the Firm shall assign or transfer any interest in or assign any claims for money due without the prior written consent of the other party. The Firm is required to notify the Treasurer if there is any material change in the Firm's investment philosophy, management style, ownership, financial condition, relationship or other matter that would affect the County.

7. CONTRACTING WITH MONEY MANAGERS

- A. Compensation to the individual investment manager(s) shall be set forth in contracts between the Treasurer and each such manager. The Firm and Treasurer will negotiate and structure said contracts with each money manager retained by the County on behalf of the Firm or LPL. The Firm shall receive no compensation from any money manager or investment broker as a result of their transacting business on behalf of the County. The Firm and LPL shall act as agents only for the County and not as principal.
- B. Each separate money manager will be required to demonstrate that they carry sufficient insurance to meet the County's needs.

8. LIABILITY

It is expressly understood and agreed by and between the parties hereto that the Firm shall hold the County harmless for all losses, damages, claims or judgments on account of any suit judgment, execution, claim, action or demand whatsoever resulting from Firm's actions or inactions under this Agreement. The Firm will carry Professional Liability Insurance to give the maximum level of account protection. The Firm shall furnish evidence of insurance to the County in form deemed sufficient to the County in its sole discretion (attached hereto as **Attachment 2**).

9. RECORDS AND AUDIT

The Firm shall maintain detailed records of all services identified in the Scope of Services. The County shall have the right to inspect all records and to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payments. The Firm shall provide to the Treasurer on a monthly basis a detailed financial fees report.

10. RELEASE

The Firm, upon final payment of the amount due under this Agreement, releases the County, its officers, agents and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Firm agrees not to purport to bind the County to any obligation not agreed to unless the Firm has express written authority from the County to do so and then only within the strict limitations of that authority.

11. CONFIDENTIALITY:

Any confidential information provided to or developed by the Firm in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Firm without the prior written approval of the County.

12. PRODUCT OF SERVICES – COPYRIGHT

Nothing produced, in whole or in part, by the Firm under this Agreement shall be the subject of an application of copyright by or on behalf of the Firm.

13. CONFLICT OF INTEREST

This Agreement is not exclusive and the County understands that the Firm and LPL may and do render similar services to others.

14. AMENDMENT

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

15. ADDITIONAL SERVICES

The parties agree that all tasks set forth in the Scope of Services, Section 1 of this Agreement, shall be completed in full, to the satisfaction of the Treasurer and County, for the amount set forth in Section 2 of this Agreement, and for no other costs, amount, fee or expense. If the parties agree that additional services are necessary, those services will be negotiated separately, by a written contract or by amendment to this Agreement approved by the Treasurer and County Manager.

Notwithstanding the above, the Firm shall, if requested verbally or in writing by the Treasurer, assist the Treasurer in review of bank contracts and depository agreements. The Firm shall receive no additional compensation for such additional services.

16. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreements or understandings, of the parties or their agents, verbal or otherwise, will be valid or enforceable unless embodied into this Agreement.

17. APPROPRIATIONS

It is expressly understood that any obligation, monetary or otherwise, shall be subject to and contingent upon the availability and sufficiency of resources for appropriations and for obligations. If sufficient funds are not appropriated or sufficient authority is not given to perform such obligations, this Agreement is subject to termination by either the Firm or the County. The County's decision as to whether sufficient appropriations are available shall be final.

18. OTHER MATTERS

A. Risk of Loss:

There are potential "risk of loss" involved in the ownership and management of securities. The Firm will not be responsible for losses in value of the Investment Funds so long as said losses result from investments that conform to the limitations set forth in the Investment Policy.

B. ADV Part 2:

It is acknowledged that the County has received a copy of the information contained in the LPL's 2008 Part 2 of Form ADV (on file in Procurement Office) as required by Rule 204-3 of the Investment Advisor's Act of 1940, as amended.

19. APPLICABLE LAW

This Agreement shall be governed by the Ordinances of the County of Sandoval and the laws of the State of New Mexico. Pursuant to Chapter 81, Laws of 2006, a Campaign Contribution Disclosure Form will be attached hereto (**Attachment 3**).

(the rest of this page left blank intentionally)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first above written.

**FIRST AMERICAN FINANCIAL
ADVISORS, INC.**

**BOARD OF COUNTY COMMISSIONERS
OF SANDOVAL COUNTY**

Robert M. Burpo, President

Darryl F. Madalena, Chair

ATTEST:

Nora Scherzinger, Vice Chair

Eileen Garbagni, County Clerk

Orlando Lucero, Member

APPROVED AS TO FORM:

Don Chapman, Member

Patrick F. Trujillo, County Attorney

Glenn Walters, Member

ATTACHMENT 1

APPENDIX D

COST RESPONSE FORM

Description	Cost per Item
Assets Under Management	.40 Basis Points
Work on Investment Policy	Included
Presentations to Board of Finance	Included
Presentations to County Commission	Included
On call services to County Treasurer	Included
On call services to County Manager	Included
Review of financial documents such as tax revenue contacts with hospitals	Included
Meetings on financial matters of the County	Included
Custom monthly reports to County Treasurer	Included
Required Quarterly third party reports	Included
Travel & Printing costs for all services above	Included
Financial Advisory services pertaining to County Bond Issues	Negotiable on a case by case basis

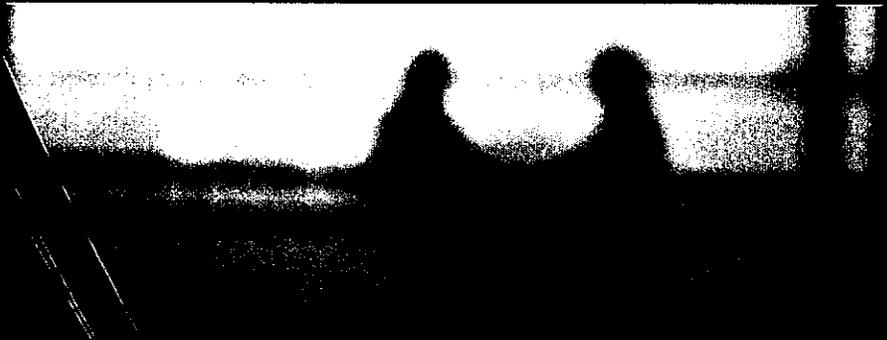
Based on above requirements and any professional services needed for configuration, installation and training:

Year 1 Cost:	\$ None
Year 2-3 Annual Cost	\$ None
Year 4 and Beyond Annual Cost:	\$ None

ATTACHMENT 2



Financial Advisor Guide to Professional Liability Program



LPL Financial LLC
Member FINRA / SIPC

December 30, 2012 to December 30, 2013

Insurance Carrier:
Continental Casualty Company (CNA)
XL Specialty Insurance (XL)

CONTENTS

LPL Financial

Program Highlights	1
Program Features	2
Approved Outside Business Activities	3
Prior Acts Coverage.....	4
What is not Covered.....	5
Certificates of Insurance	6
Program Fees	6
Claim Reporting Information.....	7
Frequently Asked Questions	8
Contact Directory	12
Insurance Program Summary	13



Program Highlights



Continental Casualty Insurance (CNA)

Admitted Coverage

A.M. Best Rating: A (excellent), XV

Policy Number: 287401940

Policy Term: 12/30/2012 – 12/30/2013



XL Specialty Insurance (XL)

Non-Admitted Coverage

A.M. Best Rating: A (excellent), XV

Policy Number: ELU128537-12

Policy Term: 12/30/2012 – 12/30/2013

LIMITS OF LIABILITY

Claims naming LPL Financial

The limit of liability is \$5,000,000 per claim. The CNA policy also features a policy aggregate limit of \$50,000,000 ⁽¹⁾.

Claims naming only the Financial Advisor

The limit of liability is \$2,000,000 per claim with a policy aggregate limit of \$50,000,000 ⁽¹⁾.

COVERAGE QUESTIONS

If you have coverage questions that are not answered in this document, please contact:

John Niedernhofer
(858) 587-7144

Janet Humphrey
(858) 587-7450



⁽¹⁾ The aggregate limit does not apply to New York State

WHO IS INSURED

Financial Advisors and their approved companies, including licensed and unlicensed administrative or clerical employees of Financial Advisors while acting on behalf of LPL Financial LLC ("LPL Financial") and OBA employees as long as employed by LPL registered Financial Advisor and solely servicing that Advisor's customers.

CLAIMS MADE & REPORTED COVERAGE

This policy applies only to claims first made against an Insured and reported to the Insurance Company during the policy period. Failure to report potential claims may jeopardize coverage.

DEDUCTIBLES

Financial advisors are required to pay a deductible for each claim. The deductible applies toward the payment of defense costs and damages.

Deductibles are determined based upon the alleged investment losses alleged in the claim or, in some cases, the type of claim.

Alleged Losses	Deductible
Up to \$100,000	\$10,000
\$100,001 to \$250,000	\$15,000
\$250,001 to \$500,000	\$20,000
\$500,001 to \$1M	\$25,000
Over \$1M	\$30,000
Trade Errors / Cost of Corrections	\$30,000
Claims naming only the Financial Advisor for approved Outside Business Activities – insurance and advisory activities	\$50,000 ^(a)
Claims arising out of affiliations prior to LPL	\$100,000 ^(b)

^(a) A buy-down option for this deductible is available at an additional charge. Please refer to page 3.

^(b) A buy-down option for this deductible is available at an additional charge. Please refer to page 4.

Program Features

A POWERFUL DEFENSE

Advisor Participation

Under the LPL Financial E&O program, the Advisor plays an active role in determining how to handle a claim.

Alignment of Defense

Claims are defended by experienced LPL attorneys or attorneys they hire, not the insurer's lawyers.

Experience

LPL Financial staff attorneys have over 100 years combined experience defending customer complaints and securities litigation with excellent results.

Knowledge of your Business

LPL Financial staff attorneys have over 100 years combined tenure at LPL Financial, helping LPL Financial Advisors defend against customer complaints, litigation and regulatory actions. They know their business.

Regulatory Assistance

Claims frequently involve companion regulatory investigations. LPL Financial's attorneys coordinate the related matters very carefully and make sure a consistent approach / strategy is taken.



WHAT IS COVERED?

The policy provides for coverage and defense for claims alleging an error or omission in rendering or failing to render a professional service as defined in the policy.

Investment advisory activities approved in writing by LPL Financial and engaged in through LPL Financial's Registered Investment Advisor also are included for coverage.

In addition, certain types of insurance activity placed directly by the financial advisor, including Life, Accident and Health Insurance sales are included for coverage.

SCOPE OF COVERAGE – PRODUCTS

Coverage extends to all products approved for you by LPL Financial.

PRIOR ACTS COVERAGE

Full Prior Acts coverage is automatic to when you began in the business as long as you have been continuously registered and insured.

Note coverage extends only to products and services approved by LPL Financial at the time sold.

Please refer to page 4 for additional information.

OUTSIDE BUSINESS ACTIVITIES EXTENSION

Coverage is available for your Approved Outside Business Activities including the sale of Life and Health insurance products independent of LPL Financial and outside RIA activities.

Please refer to page 3 for additional information.

Approved Outside Business Activities

This coverage extension is designed to cover professional services of the types which can be delivered through LPL Financial.

APPROVED OUTSIDE BUSINESS ACTIVITIES

Financial Advisors who engage in the approved sale of Life and Health insurance products independent of LPL Financial will automatically be provided and charged for coverage under the LPL Financial E&O coverage for those approved Outside Business Activities (OBA). The Advisor may also obtain separate coverage through an outside provider ⁽¹⁾.

APPROVED OUTSIDE RIA ACTIVITIES

Financial Advisors who engage in approved outside RIA activities including retirement plan consulting will automatically be provided and charged for coverage under the LPL Financial E&O coverage for those approved Outside Business Activities (OBA). The Advisor may also obtain separate coverage through an outside provider ⁽¹⁾.

DEDUCTIBLE BUY-DOWN OPTION

You now have the option of reducing your deductible for claims arising from your Approved OBA from \$50,000 to \$10,000 for an additional flat premium of \$225 which will be collected through a commission statement deduction. (This premium is in addition to the \$150 charge that appears on your commission statement on a quarterly basis.)

If you would like additional information about this option, please contact either:

Guilda Mora,
guilda.mora@barneyandbarney.com
(858) 587-7498

or Janet Humphrey,
janeth@barneyandbarney.com,
(858) 587-7450 at Barney & Barney.

⁽¹⁾ If insurance coverage is obtained elsewhere for the approved OBA, the coverage must be confirmed to Eileen Pembroke at LPL Financial.

RIA COVERAGE LIMITATIONS

- If the outside RIA includes owners / principals who are not LPL Financial affiliated, the coverage should not be expected to extend to them if they are targeted in a claim
- If the outside RIA has income generated by individuals who are not affiliated or registered with LPL Financial, nothing in connection with a claim arising from that activity would be covered if the complaint arises out of that capacity that is unrelated to and not supervised by LPL Financial. Similarly, coverage does not extend to a customer relationship where there is income generated by a person not registered with LPL Financial
- A CCO would be covered as an employee of the approved outside RIA, as would the RIA itself, but only where the claim arises from a customer relationship which involved fees generated only by the LPL Financial affiliated IAR

In short, if the outside RIA has an element of independent ownership, OR if the outside RIA has any individual IFAs who generate any of their own fee income or share fee income and those individuals are not registered with LPL Financial, then the Hybrid RIA should obtain its own E&O coverage.

Prior Acts Coverage

Prior Acts Coverage is automatic to when you began in the business as long as you have been continuously registered and insured. Coverage is subject to LPL Financial's E&O policy terms and conditions and the following:

- Coverage extends only to products and product providers that were approved by LPL Financial for its Advisors at the time the product was sold
- Coverage for each Advisor reaches back to the date on which the Advisor became continuously insured, without interruption, under any securities broker dealer professional liability policy
- In the event of a claim, you must provide written proof of your previous E&O coverage at the time you report the claim

LIMIT OF LIABILITY

- \$1,000,000 Per Claim / \$1,000,000 Annual Aggregate (Aggregate not applicable to New York Advisors)

COVERAGE TERMS AND CONDITIONS

This coverage is subject to policy terms and conditions including exclusions. Please refer to page 5, What Is Not Covered.

DEDUCTIBLE & DEDUCTIBLE BUY-DOWN OPTION

As a Prior Acts Claim, if made against you, is based on Wrongful Acts alleged to have occurred prior to you joining LPL Financial LLC, the deductible is your sole responsibility.

There are two deductible levels available for this coverage:

1. \$100,000 Per Claim – This is the standard deductible which applies if you do not choose to buy down to a lower amount.

There is no additional premium for this option.

2. \$10,000 Per Claim except a \$20,000 deductible will apply to claims involving the sale and administration of employee benefit plans (including but not limited to individual retirement accounts, Keogh retirement plans, and group or ordinary person or profit sharing plans) – This lower deductible applies only if:

- a. Between December 30, 2012 and February 28, 2013, you declared and received confirmation of your decision to purchase the deductible buy-down or
- b. You joined LPL Financial LLC in 2013, declared and received confirmation of your decision to purchase the deductible buy-down.

The premium for this option (2) is a flat fee of \$100 which will be collected through a commission statement deduction. The buy-down premium is fully earned to the policy expiration date of December 30, 2013 and no refund will be given if you leave LPL before that date.

What Is Not Covered

The policy contains exclusions that eliminate coverage for certain activities and events. The following is a brief summary of certain exclusions but not a complete listing. Please direct any specific inquiries regarding detailed policy language to LPL Financial's Legal Department or Barney & Barney.

- Prior Litigation
- Claims by Specified Persons or Entities
 - Any governmental or quasi-governmental official or agency
 - Any self-regulatory organization including, but not limited to, the SEC, FINRA, and SIPC
- Intentional / Criminal Acts, if proven
- Bodily Injury / Property Damage
- Contractual Liability / Promises / Guarantees, if proven
- Specified Services – actuary, accountant, attorney, property or casualty agent, real estate agent or third party administrator services
- Premium / tax monies / fees and commissions
- Commingling / Illegal Profit, if proven
- Insolvency of product or provider, however, defense cost coverage is provided subject to a limit of \$250,000 per claim / \$250,000 Aggregate per Insured / \$1,000,000 Total Policy Aggregate. The claim must also arise from placement of coverage with an admitted Insurer with an A.M. Best Rating of "A-" or better at the time of placement
- Employee Benefit Plans including retirement plans designed or sponsored by the insured or any entity owned or controlled by the insured or in which the insured is a participant or trustee
- Discretionary Authority – the exercise of discretionary authority with regard to the management or disposition of assets; however, this exclusion shall not apply to the activities of the Insured when exercising discretionary authority as a Registered Investment Advisor
- Anti-trust
- Non-public Information
- Unlicensed Entity
- Investment Banking Activities
- Securities below Minimum Capitalization and other standards for listing and maintenance on the NASDAQ SmallCap Market
- Any proprietary fund or investment product in which a Registered Representative has any ownership interest
- Wrongful employment practices including but not limited to discrimination or termination of employment
- Trading outside of the USA
- Outside business activity not approved by LPL Financial
- Sale or servicing of any:
 - Products or services not approved by LPL Financial LLC
 - Coverage, alleged coverage or plan placed with any form of Multiple Employer Welfare Arrangement as defined by the Employee Retirement Income Security Act of 1974, as amended, or any employee benefits plan involving self-funding in whole or in part, by any employer, union, or employment related entity
 - Commodities, commodities futures contracts, or any type of option contract with the exception of covered call options and covered put options and with the exception of alternative investments approved by the Insured Broker / Dealer which the Registered Representative is approved to sell
 - Promissory notes
 - ETS pay phone investments or other similar type investments
 - Viatical settlements, viatical insurance benefits, viatical investment pools or any security backed by viatical settlements, viatical products including viatical settlement and viatical contracts; provided ,however, this exclusion shall not apply to the purchase or sale of Life Settlement Contracts
 - "Stranger Originated Life Insurance (STOLI)" or "Speculator Initiated Life Insurance (SPINLIFE)"

Certificates of Insurance



Evidence of E&O coverage is available through LPL Financial's

BranchNet Resource Center. Go to Regulatory and click on Registration. Under the heading of Errors and Omissions (E&O) select the LINK for Certificate Requests and complete the certificate request form. A certificate will be returned to you via email or fax generally within 48 hours of receipt of the formal request.



You may also call either Guilda Mora (858) 587-7498 or Kelly Cashion (858) 875-3039 at Barney & Barney.

So that Barney & Barney can provide the information needed, please be prepared to identify the reason for providing proof of insurance and include any unusual requirements or special forms that may be requested by the party requesting proof of coverage.

Program Fees

The annual Program Fee is \$3,000. Your commission account will be debited the amount of \$750 on a quarterly basis.

The quarterly installment plan is offered as a courtesy. If your license with LPL Financial is terminated for any reason during the policy year, you are obligated to pay the full amount outstanding.

The annual OBA fee is \$600. Your commission account will be debited in the amount of \$150 on a quarterly basis.

Branch personnel who support advisors licensed with LPL Financial and do not have their own clients are insured but are not charged a separate program fee.

Advisors who wish to opt out of LPL Financial's E&O program may do so as outlined below:

- Obtain optional quotes for comparable coverage through their preferred property / casualty agent
- Submit the complete coverage quote / proposal including any applicable exclusions to Barney & Barney for approval

Janet Humphrey
janeth@barneyandbarney.com
(858) 587-7450

Guilda Mora
guilda.mora@barneyandbarney.com
(858) 587-7498

- If alternative coverage is approved, submit proof of coverage bound / certificate of insurance to Barney & Barney and LPL Financial, Attn: Eileen Pembroke. Coverage must be in place before you cancel your coverage with LPL Financial
- Provide an updated certificate to LPL Financial each year confirming you have renewed your coverage

In order to qualify as comparable coverage, your policy must meet the following criteria:

- \$2,000,000 Limit of Liability - Minimum
- Issued by an A-, XI or higher A.M. Best Rated Insurer
- The policy must have a deductible no greater than \$250,000 / claim
- Coverage must include all of the products and services offered by the advisor
- Coverage must extend to any licensed or unlicensed staff
- Coverage must extend retroactively to the date of first affiliation with LPL Financial
- LPL Financial LLC must be endorsed as an Additional Insured
- The policy must affirmatively provide Selling Away coverage for LPL Financial LLC

Claim Reporting Information

Any customer complaint should be reported to LPL Financial's Legal Department. The Legal Department will determine whether the complaint should be reported to the E&O insurance and, if so, they will submit it for you.

A claim is considered to be a written demand for monetary damages or a civil adjudicatory or arbitration proceeding for monetary damages.

If you become aware of any wrongful act or allegation of a wrongful act, even if you feel the claim is unjustified, report the matter immediately as described below.

The claims made provisions of the policy make it critical to report claims, including potential claims on a timely basis.

- As soon as you are aware of any circumstances that may lead to a claim, immediately notify LPL Financial's Legal Department:

LPL Financial LLC
Attn: Ashley Commito
75 State Street, 24th Floor
Boston, MA 02109-1827

Ashley Commito
(800) 775-4575 ext. 4497

- If a summons and complaint has been issued, send along with your cover letter, providing as much detail as possible, to: LPL Financial, attention: Stephanie Brown or Darya Geetter, at the Boston home office address. Also, please be sure to provide copies of all customer account documents relating to the allegations
- As litigated or arbitrated matters usually have a limited response time, please telephone the Legal Department within 24 hours of being served with a lawsuit or arbitration claim
- In every case, once the situation has been identified as a professional liability claim, great care should be exercised to avoid any disclosures or discussion of any facts or information related to the claim with anyone other than LPL Financial or its insurer
- If the claim involves events that occurred prior to you joining LPL Financial, you must also provide written proof of continuous E&O coverage back to the date on which the alleged Wrongful Act referenced in the claim occurred

Frequently Asked Questions

1. Are licensed and unlicensed personnel in my branch office required to pay the Program Fee?

Branch personnel who support advisors licensed with LPL and have no customers of their own are insured but are not charged a separate program fee.
2. Is coverage provided if an error is made in completing a transaction ordered by a client?

Trade Error / Cost of Corrections coverage is provided as long as assets are custodied at LPL Financial and clearing trade and execution are performed by LPL Financial.
3. How does this policy apply to the sale of Alternative Investments?

Alternative Investments are covered on a case by case basis and only if you have been specifically approved by LPL Financial, in writing, to sell the investment.
4. Is Privacy Breach covered?

If a customer claim is brought for a privacy breach arising out of the delivery of professional services, it is covered.
5. Are my activities as a Notary Public covered?

Yes.
6. Is coverage provided for financial institutions with which I am affiliated?

Vicarious Liability coverage is available for financial institutions which are contracted with LPL Financial.
7. Are my activities as a Certified Divorce Financial Analyst covered?

Services that can be offered through LPL Financial are covered when provided in the capacity of a CDFA. Examples include analysis of investment portfolios, implications of selling an investment, impact of early withdrawals, analysis of retirement plans and benefit programs, or developing a financial plan. However, other activities not normally offered through LPL Financial are not covered. Examples include preparation of financial statements and budgets, expert witness testimony, and analysis of business records.
8. Are activities as a Property & Casualty agent covered?

No, these activities are excluded.
9. Does this policy cover my accounting and/or tax preparation activities?

No, accounting and tax preparation services are excluded.

Frequently Asked Questions (Continued)

10. What coverage does the policy provide for my activities involving Employee Benefit Plans?

Examples of the types of activities that are covered are:

- Plan investment due diligence
- Researching and collecting information about the company and its goals for the plan Education on plan features such as auto-enrollment and auto-escalation and benefits of various matching / contribution formulas
- If retained as a fiduciary, monitoring and analyzing plan performance and communicating about it to the plan Fiduciary
- Vendor analysis
- Plan benchmarking
- Participant education
- Enrollment related services

11. Is Plan Design covered?

No, it is not as plan design is a settler function that often includes legal and tax advice. Examples of the types of activities that are not covered are:

- Writing the plan
- Plan accounting
- Plan legal opinions
- Plan approval
- Amending plan documents
- Decisions on company matching
- Changes to vesting schedules
- Changing eligibility
- Changing the enrollment process

12. Am I covered if I act as a fiduciary to an ERISA plan?

If retained as a fiduciary, the policy includes coverage for *“any actual or alleged error, omission, negligent act, misstatement, misleading statement, neglect or breach of duty imposed upon an Insured by ERISA or any Similar Act, solely in such Insured’s capacity as a fiduciary of a plan, or any matter claim against an Insured solely by reason of his, her, or its status as a fiduciary of a Plan.”*

13. Am I required to have E&O coverage for the Outside Business Activity of a RIA or non-variable insurance?

Yes. You may obtain coverage through the LPL Financial program (see page 3) or on your own.

Frequently Asked Questions (Continued)

14. Is coverage available under LPL Financial's program for Approved OBA?
- Yes, coverage is available for sale of Life and Health insurance products independent of LPL Financial and approved outside RIA activities as long as the Advisor is participating in LPL Financial's general E&O insurance program. See page 3 for additional information.
- This coverage is no broader than coverage provided for services offered through LPL Financial.
15. How do I terminate my OBA coverage under the LPL Financial E&O program?
- If you are completely terminating your OBA and have no need for the insurance, you may use Service Express.
- If you are not terminating your OBA but instead purchasing your coverage away from LPL Financial, you should notify the Service Center. Please note: you must have the replacement coverage in place in order for the next quarterly charge to be removed from your statement.
16. What happens if my affiliation with LPL Financial is terminated during the policy period?
- Coverage ends for an Advisor on the date they depart, unless they retire.
17. What happens if I retire?
- The ability to report a claim continues for Advisors who retire and exit the industry.
18. Am I covered for claims arising out of Prior Acts at previous firms?
- Prior Acts coverage is automatic. It extends back to when you began in the business as long as you have been continuously registered and insured. Note coverage only extends to products and services approved by LPL Financial at the time sold.
- If you have a claim tied to events that occurred prior to you joining LPL Financial, you must provide written proof of continuous E&O coverage back to the date on which the alleged Wrongful Act referenced in the claim occurred.
19. Why aren't all my prior activities covered?
- The coverage for LPL Advisors extends to products the Advisor is approved to offer. The coverage does not extend to products not approved by LPL Financial at the time of sale.
- Also, payment of claims for failed products such as DBSI or Provident which were not approved by LPL Financial could significantly impair or even exhaust the limits available for other advisors.
20. Does the policy cover legal fees and related costs of defending an E&O claim?
- Yes.

Frequently Asked Questions (Continued)

21. Can the Insurer settle a claim without my consent?

Yes. The Insurer may investigate and negotiate settlement of any claim it deems appropriate.

22. Is there coverage for disciplinary proceedings?

No. However, LPL Financial's Legal Department may be able to provide assistance depending on the specific circumstances.

23. If I have a claim, may I select my own attorney?

Unless faced with the rare event of a legal conflict where separate counsel is required, you must work with the LPL Financial insurer and approved representation. If for some reason, separate legal representation is necessary, the E&O insurer retains the right to appoint the separate attorney for the Advisor.

24. If I want to explore separate insurance and opt out of the LPL program, what should I do?

- Obtain optional quotes for comparable coverage (see below) through your choice of property/casualty agent.
- Submit the complete coverage quote / proposal including any applicable exclusions to Barney & Barney, LLC for review and to confirm if all requirements have been met. Contacts are:

Janet Humphrey
janeth@barneyandbarney.com
(858) 587-7450
Guilda Mora
guilda.mora@barneyandbarney.com
(858) 587-7498
- If alternative coverage is approved, submit proof of coverage bound / certificate of insurance to Barney & Barney and LPL Financial. Coverage must be in place before you cancel your coverage with LPL Financial.
- Provide an updated certificate to LPL Financial each year confirming you have renewed your coverage.

25. What is comparable coverage?

In order to qualify as comparable coverage, your policy must meet the following criteria:

- \$2,000,000 Limit of Liability – Minimum
- Issued by an A-, XI or higher A.M. Best Rated insurer
- The policy must have a deductible no greater than a \$250,000/claim
- Covering all of the products and services offered by the advisor
- Coverage must extend to any licensed or unlicensed staff
- Coverage must extend retroactively to the date of first affiliation with LPL Financial
- LPL Financial LLC must be endorsed as an Additional Insured
- The policy must affirmatively provide Selling Away coverage for LPL Financial LLC

Contact Directory

Questions regarding	Company	Contact
Certificates of Insurance	BranchNet Barney & Barney Guilda Mora Kelly Cashion	(858) 587-7498 (858) 875-3039
Coverage Questions	LPL Financial Legal Department Barney & Barney Janet Humphrey John Niedernhofer Guilda Mora	(800) 775-4575 (800) 321-4696
Enrollment and Program Fee	LPL Financial Eileen Pembroke	(800) 775-4575 ext. 4293
Claim Reporting or Assistance	LPL Financial Legal Department Ashley Commito	(800) 775-4575, ext. 4497

Insurance Program Summary

Policy Provision Highlight	Continental Casualty Company (CNA) XL Specialty Insurance (XL)																		
Named Insured	LPL Financial LLC 75 State St., 24 th Floor. Boston, MA 02109																		
Broker	Barney & Barney LLC																		
Insureds	Financial Advisors of LPL Financial LLC																		
Policy Period	From: 12/30/2012 – 12/30/2013 At 12:01 a.m. standard time at your address shown above																		
Policy Number	287401940 (CNA) and ELU128537-12 (XL)																		
Limits of Liability	<table border="0"> <tr> <td>Each Wrongful Act</td> <td>\$</td> <td>5,000,000</td> </tr> <tr> <td>Policy Aggregate ⁽¹⁾</td> <td>\$</td> <td>50,000,000</td> </tr> <tr> <td colspan="3">Except CLAIMS naming only the Financial Advisor:</td> </tr> <tr> <td>Each Wrongful Act</td> <td>\$</td> <td>2,000,000</td> </tr> <tr> <td>Policy Aggregate ⁽¹⁾</td> <td>\$</td> <td>50,000,000</td> </tr> </table>	Each Wrongful Act	\$	5,000,000	Policy Aggregate ⁽¹⁾	\$	50,000,000	Except CLAIMS naming only the Financial Advisor:			Each Wrongful Act	\$	2,000,000	Policy Aggregate ⁽¹⁾	\$	50,000,000			
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Policy Aggregate ⁽¹⁾	\$	50,000,000																	
Program Fees	<table border="0"> <tr> <td>12 Month Policy Term Billed Quarterly</td> <td>\$</td> <td>3,000</td> </tr> <tr> <td>Additional Fee for Financial Advisors Engaging in Approved Outside RIA or Life and Health Insurance Activities</td> <td>\$</td> <td>600</td> </tr> </table>	12 Month Policy Term Billed Quarterly	\$	3,000	Additional Fee for Financial Advisors Engaging in Approved Outside RIA or Life and Health Insurance Activities	\$	600												
12 Month Policy Term Billed Quarterly	\$	3,000																	
Additional Fee for Financial Advisors Engaging in Approved Outside RIA or Life and Health Insurance Activities	\$	600																	
Deductibles	<p>Financial Advisors are required to pay a deductible for each claim. The deductible applies toward the payment of defense costs and damages. Financial advisors are subject to the following deductibles based upon the investment losses alleged in the claim (excluding interest, punitive damages, loss and attorney fees) or the type of claim:</p> <table border="0"> <thead> <tr> <th>ALLEGED LOSSES</th> <th>DEDUCTIBLE</th> </tr> </thead> <tbody> <tr> <td>Up to \$100,000</td> <td>\$ 10,000</td> </tr> <tr> <td>\$100,001 to \$250,000</td> <td>\$ 15,000</td> </tr> <tr> <td>\$250,001 to \$500,000</td> <td>\$ 20,000</td> </tr> <tr> <td>\$500,001 to \$1 million</td> <td>\$ 25,000</td> </tr> <tr> <td>Over \$1 million</td> <td>\$ 30,000</td> </tr> <tr> <td>Trade Errors</td> <td>\$ 30,000</td> </tr> <tr> <td>Claims Naming only the Financial Advisor for Approved Outside Insurance and Advisory Activities</td> <td>\$ 50,000⁽²⁾</td> </tr> <tr> <td>Prior Acts</td> <td>\$ 100,000⁽³⁾</td> </tr> </tbody> </table>	ALLEGED LOSSES	DEDUCTIBLE	Up to \$100,000	\$ 10,000	\$100,001 to \$250,000	\$ 15,000	\$250,001 to \$500,000	\$ 20,000	\$500,001 to \$1 million	\$ 25,000	Over \$1 million	\$ 30,000	Trade Errors	\$ 30,000	Claims Naming only the Financial Advisor for Approved Outside Insurance and Advisory Activities	\$ 50,000 ⁽²⁾	Prior Acts	\$ 100,000 ⁽³⁾
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⁽¹⁾ The aggregate limit does not apply to New York State

⁽²⁾ A buy-down option for this deductible is available at an additional charge. Please refer to page 3.

⁽³⁾ A buy-down option for this deductible is available at an additional charge. Please refer to page 4.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/20/2013 09:57

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Barney & Barney LLC CA Insurance Lic: 0C03950 9171 Towne Centre Drive, Suite 500 San Diego, CA 92122 858-457-3414	CONTACT NAME: Guilda Mora	PHONE (A/C, No, Ext): (858) 587-7498	FAX (A/C, No): (858) 909-9786
	E-MAIL ADDRESS: guilda.mora@barneyandbarney.com		
INSURED LPL Financial LLC and its Financial Advisors 75 State Street, 23rd Floor Boston, MA 02109 Client # 39708	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Continental Casualty Company		20443
	INSURER B: XL Specialty Insurance Company		
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES CERTIFICATE NUMBER: 621547 MST NUMBER: 25818 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/OP AGG \$
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTIONS						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	ERRORS & OMISSIONS			287401940	12/30/2012	12/30/2013	\$2,000,000 EACH CLAIM - REG. REP. LIMIT \$3,000,000 EACH CLAIM - ENTITY LIMIT \$50,000,000 POLICY AGGREGATE

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

B: EXCESS E&O; POLICY NO: ELU12853712; 12/30/2012-12/30/2013; LIMIT \$2,000,000 EXCESS \$3,000,000 ENTITY LIMIT

CERTIFICATE HOLDER

ROBERT BURPO

2155 LOUISIANA NE
SUITE 10011
ALBUQUERQUE, NM 87110

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Guilda Mora

Subject

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ATTACHMENT 3

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s)

(Attach extra pages if necessary)

Signature

Date

Title (position)

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)