

ALTERNATIVE 2

INDEMNIFICATION AND INSURANCE PROVISIONS

A. **INSURANCE**: Consultant agrees, at its own expense, to maintain with insurance companies acceptable to the County general liability, professional liability, comprehensive automobile liability, and workers' compensation insurance as set forth below:

1. **General Liability Insurance**: The Consultant shall maintain general liability insurance written on a commercial or comprehensive general liability form(s) that include(s) coverage for premises-operations, products/completed operations, contractual liability, broad-form property damage, and personal injury liability. The general liability policy shall have a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.

2. **Professional Liability Insurance**: Consultant shall maintain professional liability insurance, including contractual liability coverage, with policy limits of at least One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

3. **Comprehensive Automobile Insurance**: The Consultant shall maintain automobile insurance for all owned, non-owned, and hired vehicles with a combined single limit of One Million Dollars (\$1,000,000) per occurrence or accident.

4. **Workers' Compensation Insurance**: The Consultant shall maintain workers' compensation insurance in an amount and form which will meet all applicable requirements of the Labor Code of the State of California, including Employers' Liability Coverage with limits of One Million Dollars (\$1,000,000) per occurrence.

5. **General Conditions Relating to Insurance**:

a. **Additional Insureds**: The County, District, its agents, appointed and elected officers, County Special Districts, and employees ("County and its related persons and entities") shall be named as additional insureds on each policy, except workers' compensation and professional liability insurance, the Consultant is required to provide under this Agreement. Such insurance shall be primary to, and not contributing with, any other insurance maintained by or for the County and its related persons and entities.

b. **Waiver of Subrogation**: Each policy obtained by the Consultant to fulfill its obligations under this provision shall contain a provision waiving the right of the insurer to subrogate against the County and its related persons and entities for any liability covered by the policy.

c. **Claims Made Policies**: If any of the policies obtained by the Consultant to fulfill its obligations under this provision are written on a claims-made basis, the policy shall be endorsed to provide an extended reporting period of not less than two years following the termination of this Agreement or the Consultant's work on the project referred to in this Agreement, whichever is later.

d. **Occurrence Policies**: If any of the policies obtained by the Consultant to fulfill its obligations under this provision are written on an occurrence basis, the policies and any endorsements required by this provision (including, but not limited to, the additional insured endorsements) shall be maintained in full force and effect for a period of not less than two years following the termination of this Agreement or the Consultant's work on the project referred to in this Agreement, whichever is later.

e. **Certificate of Insurance**: Prior to commencing work on the project referred to in this Agreement, the Consultant shall provide to the County certificate(s) of insurance identifying the insurers, policies, coverage, and limits of liability for the insurance the Consultant is required to provide under this provision. Accompanying the certificate(s) shall be a copy of the required additional insured endorsement(s) to the policies obtained by the Consultant as set forth above.

f. **Notice of Cancellation or Nonrenewal**: Each policy shall require the insurer to give the County at least 30 days notice of termination of the policy by cancellation, rescission, nonrenewal, or otherwise. Notice shall also be given to County of any material change in the terms of the coverage required to be maintained by the Consultant under this provision.

g. **Delivery of Notices**: All certificates and notices required by this provision shall be in writing and shall be delivered to the Department Contract Administrator. The notices and certificates shall refer to this contract.

h. **Maintenance of Insurance**: The Consultant shall promptly pay the premiums on all insurance policies required under this provision. The Consultant further agrees that the policies shall remain in full force and effect as required by this Agreement. Consultant agrees to immediately obtain replacement coverage for any policy which is terminated, canceled, non-renewed, or which has paid policy limits, or upon the insolvency of the insurer issuing the policy.

i. **Breach**: Failure on the part of Consultant to procure or maintain insurance as required by this provision shall constitute a material breach of this contract. In the event of such a breach, the County may, among other things, terminate this Agreement, suspend work being performed on the project by or on behalf of the Consultant, or at its sole discretion, the County may obtain replacement coverage. In the event that replacement coverage is obtained, the Consultant

shall, upon demand, repay the County for the full amount of premiums paid by the County for the replacement coverage. In its sole discretion, the County may offset the cost of premiums against any monies due to the Consultant from the County.

B. INDEMNIFICATION: Consultant agrees to indemnify and save harmless the County, DISTRICT, its agents, appointed and elected officers, County Special DISTRICTS, and employees ("County and its related persons and entities") from any and all claims, liabilities, expenses, lawsuits, actions, or proceedings arising from, or connected with, any act or omission of the Consultant, its agents, or subcontractors of any tier. The obligation to indemnify the County is in addition to the obligation to procure insurance as set forth in this provision.

County agrees that prior to demanding a defense from the Consultant, that it or Consultant shall tender such claim to the insurers issuing the policies of insurance referred to in this provision. If the claims are not covered by any policy referred to in this provision, or the insurers refuse to defend the County or any of its related persons and entities, then the Consultant shall be obligated to defend the County from any claim, suit, or proceeding in which it has been claimed or alleged that the acts or omissions of the Consultant, its agents, or subcontractors of any tier were a cause of the damages claimed against the County and its related persons and entities in that suit, action, or proceeding.

Neither the Consultant, nor its agents and subcontractors of any tier, shall be obligated to indemnify the County and its related persons and entities for liabilities caused by the active negligence of the County and its related persons and entities. However, this provision does not limit any obligation to defend or indemnify the County and its related persons and entities arising under the policies of insurance maintained by the Consultant under this provision.

C. SUBCONTRACTOR'S INSURANCE AND INDEMNIFICATION: Consultant agrees to require its subcontractors, subcontractors, and independent contractors maintain the same insurance coverage which it is required to maintain under this provision, including but not limited to, the obligation to name the County and its related persons and entities as additional insureds under each such policy.

Consultant further agrees to require its subcontractors, and independent contractors to indemnify and defend the County and its related persons and entities from any and all claims, liabilities, expenses, lawsuits, actions, or proceedings arising from, or connected with, any act or omission of each such subcontractor, or independent contractor, its agents, or subcontractor of any tier.

Failure on the part of Consultant to require its subcontractors and independent contractors to provide insurance and indemnification shall constitute a material breach of this contract. In the event of such breach, the County may, among other things, terminate this Agreement, suspend work being performed on the project by or on behalf of the Consultant, or in its sole discretion, the County may obtain replacement insurance

coverage. In the event that replacement coverage is obtained, the Consultant shall, upon demand, repay the County for the full amount of premiums paid by the County for the replacement coverage. In its sole discretion, the County may offset the cost of premiums against any monies due to the Consultant from the County.

Consultant agrees to the above Indemnification and Insurance Provisions.

Initials / Date

07/2010