

AGREEMENT TO DISTRIBUTE SETTLEMENT FUNDS

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Isla Vista Recreation & Park District with an address at 961 Embarcadero Del Mar, Isla Vista, CA 93117 (hereafter RECIPIENT) wherein RECIPIENT agrees to provide and COUNTY agrees to fund the Projects specified herein.

WHEREAS, in September, 2010, the University of California, Santa Barbara ("University"), the City of Goleta, and the COUNTY entered into the "2010 University of California, Santa Barbara Long Range Development Plan Mitigation Implementation and Settlement Agreement" (the "2010 Agreement"). The 2010 Agreement addressed enrollment, housing, traffic and other impacts of the UCSB 2010 Long Range Development Plan (the "2010 LRDP");

WHEREAS, the County claimed that the University breached the terms of the 2010 Agreement related to enrollment and housing, and other contractual obligations imposed on the University by the 2010 Agreement or by operation of law;

WHEREAS, on September 29, 2022, the County filed a lawsuit for breach of contract and disgorgement of profit for opportunistic breach, entitled the *County of Santa Barbara v. Regents of the University of California*, Case No. 22CV03741;

WHEREAS, the University and County reached a settlement of the County's claim, which resulted in the UC Santa Barbara – County of Santa Barbara Settlement Agreement and Release, which included payment to the County to complete certain mutually agreed to beneficial capital projects;

WHEREAS, the County is in receipt of the funding conferred by the UC Santa Barbara – County of Santa Barbara Settlement Agreement;

WHEREAS, by this Agreement, the intent to provide funding to the RECIPIENT to complete certain mutually agreed to beneficial capital projects; and

WHEREAS, RECIPIENT represents that it will contract with qualified third-party contractors that are specially trained, skilled, experienced, and competent to complete the Projects as described in EXHIBIT A;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. DESIGNATED REPRESENTATIVE

Wade Horton at phone number (805) 568-3551 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Kimberly Kiefer at phone number (805) 680-4300 is the authorized representative for RECIPIENT. Changes in designated representatives shall be made only after advance written notice to the other party.

2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY: Wade Horton, 105 E. Anapamu St., Santa Barbara CA 93101,
To RECIPIENT: Kimberly Kiefer, 961 Embarcadero del Mar, Goleta, CA 93117

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. SCOPE OF PROJECT

RECIPIENT agrees to complete or cause to be completed the Projects described in accordance with EXHIBIT A attached hereto and incorporated herein by reference. The Projects may be completed by qualified third-party contractors retained by RECIPIENT and under RECIPIENT's direct supervision.

4. TERM

RECIPIENT shall commence performance on February 4, 2025, unless otherwise directed by COUNTY, and end performance upon completion, unless earlier terminated pursuant to Paragraph 19, below. If the Projects described in EXHIBIT A are not completed by June 29, 2028, RECIPIENT shall return the funds within 30 days of June 29, 2028.

5. DISTRIBUTION OF FUNDS TO RECIPIENT

Funds shall be distributed to RECIPIENT in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference.

6. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that RECIPIENT (including any and all of its officers, agents, and employees), shall perform or cause to be performed all of its Projects set forth under this Agreement as an independent contractor as to COUNTY and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which RECIPIENT shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that RECIPIENT is performing its obligations in accordance with the terms and conditions hereof. RECIPIENT understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. RECIPIENT shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, RECIPIENT shall be solely responsible and save COUNTY harmless from all matters relating to payment of RECIPIENT employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, RECIPIENT may be providing services to others unrelated to the COUNTY or to this Agreement.

7. STANDARD OF PERFORMANCE

RECIPIENT represents that it has the skills, expertise, and licenses/permits necessary to complete the Projects required under this Agreement or will retain qualified third-party contractors to complete the Projects. Accordingly, RECIPIENT shall complete or cause to be completed all such Projects in the manner and according to the standards observed by a competent practitioner of the same profession in which RECIPIENT is engaged. All products of whatsoever nature, which RECIPIENT delivers pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in RECIPIENT's profession. RECIPIENT shall correct or revise any errors or omissions, at COUNTY'S request without

additional compensation. Permits and/or licenses shall be obtained and maintained by RECIPIENT without additional compensation. RECIPIENT shall be liable for all work pursuant to this Agreement, even if such work is performed by a third-party contractor. RECIPIENT shall ensure that all final products meet the standards of this Agreement and shall retain sole responsibility for seeking changes or enforcement against third-party contractors.

8. DEBARMENT AND SUSPENSION

RECIPIENT certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. RECIPIENT certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. TAXES

RECIPIENT shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. COUNTY shall not be responsible for paying any taxes on RECIPIENT's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, RECIPIENT agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

10. CONFLICT OF INTEREST

RECIPIENT covenants that RECIPIENT presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. RECIPIENT further covenants that in the performance of this Agreement, no person having any such interest shall be employed by RECIPIENT. RECIPIENT must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by RECIPIENT if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to RECIPIENT in writing.

11. INTENTIONALLY DELETED

12. NO PUBLICITY OR ENDORSEMENT

RECIPIENT shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. RECIPIENT shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing RECIPIENT. RECIPIENT shall not in any way contract on behalf of or in the name of COUNTY. RECIPIENT shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

13. INTENTIONALLY DELETED

14. RECORDS, AUDIT, AND REVIEW

RECIPIENT shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of RECIPIENT profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during RECIPIENT's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), RECIPIENT shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under

the Agreement (Cal. Govt. Code Section 8546.7). RECIPIENT shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, RECIPIENT shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, RECIPIENT shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

15. INDEMNIFICATION AND INSURANCE

RECIPIENT agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

16. NONDISCRIMINATION

COUNTY hereby notifies RECIPIENT that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and RECIPIENT agrees to comply with said ordinance.

17. NONEXCLUSIVE AGREEMENT

RECIPIENT understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others to distribute settlement funds .

18. NON-ASSIGNMENT

RECIPIENT shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. COUNTY acknowledges that third-party contractors may perform some of the work under this Agreement.

19. TERMINATION

- A. By COUNTY. COUNTY may, by written notice to RECIPIENT, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for Non appropriation of funds, or because of the failure of RECIPIENT to fulfill the obligations herein.

For Cause. Should RECIPIENT materially default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, RECIPIENT shall immediately discontinue all services affected (unless the notice directs otherwise) and notify COUNTY as to the status of its performance. The date of termination shall be the date the notice is received by RECIPIENT, unless the notice directs otherwise. Remaining or unspent funds shall be returned by RECIPIENT to COUNTY within 30 days of the termination date.

- B. By RECIPIENT. Should COUNTY fail to pay RECIPIENT all or any part of the payment set forth in EXHIBIT B, RECIPIENT may, at RECIPIENT's option terminate this Agreement if such failure is not remedied by COUNTY within thirty (30) days of written notice to COUNTY of such late payment.

20. SECTION HEADINGS

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

21. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

22. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

23. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein.

24. NO WAIVER OF DEFAULT

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

25. ENTIRE AGREEMENT AND AMENDMENT

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties as to the matters expressly set forth herein and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

26. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

27. COMPLIANCE WITH LAW

RECIPIENT shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of RECIPIENT in any action or proceeding against RECIPIENT, whether COUNTY is a party thereto or not, that RECIPIENT has violated any such ordinance or statute, shall be conclusive of that fact as between RECIPIENT and COUNTY.

28. CALIFORNIA LAW AND JURISDICTION

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

29. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

30. AUTHORITY

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, RECIPIENT hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which RECIPIENT is obligated, which breach would have a material effect hereon.

31. SURVIVAL

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

32. PRECEDENCE

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

//

Agreement to Distribute Settlement Funds between the **County of Santa Barbara** and Isla Vista Recreation & Park District.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

COUNTY OF SANTA BARBARA:

By: _____
Deputy Clerk

By: _____
Chair, Board of Supervisors


Date: _____


RECOMMENDED FOR APPROVAL:

Wade Horton
County Executive Office

RECIPIENT:

Isla Vista Recreation & Park District

Signed by:

By: _____
Assistant County Executive Officer

Signed by:

By: _____
Authorized Representative
Name: Kimberly Kiefer
Title: IVRPD General Manager

APPROVED AS TO FORM:


Rachel Van Mullem
County Counsel

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA
Auditor-Controller

Signed by:

By: _____
Deputy County Counsel

Signed by:

By: _____
Deputy

APPROVED AS TO FORM:

Risk Management

Signed by:

By: _____
Risk Management

EXHIBIT A

STATEMENT OF WORK

Recipient shall complete the following capital construction projects in conformance with this agreement:

Children’s Park Upgrades:

The Children’s Park Renovation Project aims to improve the health and quality of life for intergenerational families living in Isla Vista whom for years have not been fully represented in community planning processes as such. IVRPD gathered feedback on park amenities, design features, and themes. After going out to RFP, IVRPD awarded a contract to Pacific Coast Land Design to develop a conceptual park design and support additional community engagement. The final concept design was presented to the Isla Vista Recreation & Park District Board of Directors for approval on March 4th, 2021. Improvements in the park design include two nature-themed playgrounds, ADA-accessible pathways, an amphitheater for workshops and performances, a new standalone restroom, an educational demonstration garden, a renovated recreation building for expanding workshop programs and services for students and youth alike.

Pardall Park Lighting: Pardall Gardens (6514 Pardall Road) is a public park in downtown Isla Vista within the business corridor of Pardall Road near the bike tunnel that connects Isla Vista to UC Santa Barbara. Pardall Gardens is a south-facing, approximately 720 square foot lot of unirrigated parkland that currently lacks amenities, infrastructure, or “park identity”. Isla Vista Recreation & Park District (IVRPD) conducted a 3-month survey from May to July 2021, known as the “Measure O Survey”, to establish a priority list of parks and amenities based on public input. IVRPD partnered with Pacific Coast Land Design (PCLD), a landscape architect firm based in Ventura, CA, to develop a conceptual site plan based on continuous and ongoing engagement with the Isla Vista community. Onsite voting boards installed at Pardall from November 11th - 16th invited park goers and passersby to vote on their favorite park elements and choose from 3 primary design concepts. Voters selected the “Peaceful Pardall” design theme that features decomposed granite walkways, a wooden deck, shade structure, tree and xeriscape planting, benches, picnic tables, bar-top seating, lighting, and a gathering area known as the “paver plaza”. Groundbreaking will begin in January 2025, with a grand opening set for Spring 2025. Project must be completed by the deadline of June 29, 2028.

Parks/Recreation and Open Space Related	
• Isla Vista Recreation and Park District’s Children’s Park community room safety and facility upgrades	\$250,000
• Isla Vista Recreation and Park District’s AO and Pardall Park Lighting	\$178,000

//

//

//

//

//

EXHIBIT B

PAYMENT ARRANGEMENTS

Periodic Compensation

- A. For RECIPIENT services to be rendered under this Agreement, RECIPIENT shall be paid a total contract amount, including cost reimbursements, not to exceed \$428,000.
- B. Payment shall be made to RECIPIENT within 30 days of execution of this Agreement, based upon the scope and methodology contained in EXHIBIT A.
- C. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require RECIPIENT to correct such work or billings or seek any other legal remedy.

EXHIBIT C

Indemnification and Insurance Requirements (For Construction Contracts)

INDEMNIFICATION

RECIPIENT agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is caused by the active negligence, sole negligence, or willful misconduct of the COUNTY.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

RECIPIENT shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

RECIPIENT shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the RECIPIENT, its agents, representatives, employees or subcontractors.

A. Minimum Scope and Limit of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
2. **Automobile Liability:** Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than \$2,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Contractor's Pollution Legal Liability and/or Asbestos Legal Liability:** (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If the RECIPIENT maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the RECIPIENT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the RECIPIENT including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the RECIPIENT's insurance at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).
2. **Primary Coverage** – For any claims related to this Agreement, the RECIPIENT's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the RECIPIENT's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – **RECIPIENT hereby agrees to waive rights of subrogation which any insurer of RECIPIENT may acquire** from RECIPIENT by virtue of the payment of any loss. RECIPIENT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the COUNTY for all work performed by the RECIPIENT, its employees, agents and subcontractors. This provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. At the option of the COUNTY, either: the RECIPIENT shall cause the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the COUNTY, its officers, officials, employees, agents and volunteers; or the RECIPIENT shall provide a financial guarantee satisfactory to the COUNTY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – RECIPIENT shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the RECIPIENT's obligation to provide them. The RECIPIENT shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – RECIPIENT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and RECIPIENT shall ensure that COUNTY is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. If coverage is canceled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the RECIPIENT must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. RECIPIENT agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.