

Contract Summary Form:

Contract Number: PC-12-012

Complete data below, print, obtain signature of authorized departmental representative, and submit this form (and attachments) to the Clerk of the Board (>\$100,000). If less than (<\$100,000) submit a Purchasing Requisition to the Purchasing Division of General Services. See "online purchasing manual" under General Services, Purchasing, Policies and Procedures. Form not applicable to revenue contracts.

D1. Fiscal Year..... : FY 2011-12 and 2012-13

D2. Budget Unit Number (plus -Ship/-Bill codes in paren's): 054

D3. Requisition Number..... : /

D4. Department Name..... : Public Works/Flood Control

D5. Contact Person..... : Rick Tomasini

D6. Phone..... : ext. 5636

K1. Contract Type (check one): [] Personal Service [] Capital Project/Construction

K2. Brief Summary of Contract Description/Purpose : crane services

K3. Original Contract Amount..... : \$300,000

K4. Contract Begin Date..... : July 1, 2011

K5. Original Contract End Date..... : June 30, 2013

K6. Amendment History (leave blank if no prior amendments):

<u>Seq#</u>	<u>EffectiveDate</u>	<u>ThisAmndt</u>	<u>AmtCum</u>	<u>AmndtTo</u>	<u>DateNew</u>	<u>TotalAmt</u>	<u>NewEnd</u>	<u>EndDate</u>	<u>Purpose (2-4 words)</u>
			\$	\$		\$			

K7. Department Project Number..... :

B1. Is this a Board Contract? (Yes/No)..... : yes

B2. Number of Workers Displaced (if any)..... : N/A

B3. Number of Competitive Bids (if any)..... : 3

B4. Lowest Bid Amount (if bid)..... :

B5. If Board waived bids, show Agenda Date..... :

B6. ... and Agenda Item Number..... : #

B7. Boilerplate Contract Text Unaffected? (Yes / or cite ¶¶) :

F1. Encumbrance Transaction Code..... : 1701

F2. Current Year Encumbrance Amount..... : \$

F3. Fund Number..... : 2610

F4. Department Number..... : 054

F5. Division Number (if applicable)..... : 04

F6. Account Number..... : 7701 Program: 3002

F7. Cost Center number (if applicable)..... :

F8. Payment Terms..... : Net 30

V1. Vendor Numbers (A=uditor; P=urchasing)..... : 596910

V2. Payee/Contractor Name..... : OST Trucks & Cranes, Inc.

V3. Mailing Address..... : P.O. Box 237

V4. City State (two-letter) Zip (include +4 if known) : Ventura, CA 93002

V5. Telephone Number..... : (805) 643-9963

V6. Contractor's Federal Tax ID Number (EIN or SSN) :

V7. Contact Person..... : L.Dennis Zermeno

V8. Workers Comp Insurance Expiration Date..... :

V9. Liability Insurance Expiration Date[s] (G=enl; P=rofl) :

V10. Professional License Number..... : #

V11. Verified by (name of County staff)..... :

V12. Company Type (Check one): [] Individual [] Sole Proprietorship [] Partnership [] Corporation

I certify: information complete and accurate; designated funds available; required concurrences evidenced on signature page.

Date : Authorized Signature JM 10-311

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THIS AGREEMENT (hereafter Agreement) is made by and between the Santa Barbara County Flood Control & Water Conservation District, a political subdivision of the State of California (hereafter COUNTY) and **OST Trucks and Cranes, Inc.** having its principal place of business at 2951 N. Ventura Avenue, Ventura, CA 93001 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

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

1. **DESIGNATED REPRESENTATIVE.** Rick Tomasini at phone number (805) 681-5636 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. L. Dennis Zermeno at phone number (805) 643-9963 is the authorized representative for CONTRACTOR. 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 first class mail, postage prepaid, or otherwise delivered as follows:

To COUNTY: Rick Tomasini, SBCFC&WCD, 123 E. Anapamu Street, Suite 240, Santa Barbara, CA 93101

To CONTRACTOR: L. Dennis Zermeno, OST Trucks and Cranes, Inc., P.O. Box 237, Ventura, CA 93002

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. **SCOPE OF SERVICES.** CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. **TERM.** CONTRACTOR shall commence performance on July 1, 2011 and end performance upon completion, but no later than June 30, 2013 unless otherwise directed by COUNTY or unless earlier terminated.

5. **COMPENSATION OF CONTRACTOR.** CONTRACTOR shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 **NOTICES.** above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. **INDEPENDENT CONTRACTOR.** CONTRACTOR shall perform all of its services under this Agreement as an independent contractor and not as an employee of COUNTY. CONTRACTOR 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.

7. **STANDARD OF PERFORMANCE.** CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All

products of whatsoever nature, which CONTRACTOR delivers to COUNTY 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 CONTRACTOR's profession. CONTRACTOR 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 CONTRACTOR without additional compensation.

8. **TAXES.** COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR 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.

9. **CONFLICT OF INTEREST.** CONTRACTOR covenants that CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR.

10. **RESPONSIBILITIES OF COUNTY.** COUNTY shall provide all information reasonably necessary by CONTRACTOR in performing the services provided herein.

11. **OWNERSHIP OF DOCUMENTS.** COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any materials under this section except after prior written approval of COUNTY.

No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of COUNTY. COUNTY shall have the unrestricted authority to publish, disclose, distribute, and other use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

12. **RECORDS, AUDIT, AND REVIEW.** CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's 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 practices. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice.

13. **INDEMNIFICATION AND INSURANCE.** CONTRACTOR shall agree to defend, indemnify and save harmless the COUNTY and to procure and maintain insurance in accordance with the provisions of EXHIBIT C attached hereto and incorporated herein by reference.

14. **NONDISCRIMINATION.** COUNTY hereby notifies CONTRACTOR 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 CONTRACTOR agrees to comply with said ordinance.

15. **NONEXCLUSIVE AGREEMENT.** CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

16. **ASSIGNMENT.** CONTRACTOR shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

17. **TERMINATION.**

A. **By COUNTY.** COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience or because of the failure of CONTRACTOR to fulfill the obligations herein. Upon receipt of notice, CONTRACTOR shall immediately discontinue all services effected (unless the notice directs otherwise), and deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process.

1. For Convenience. COUNTY may terminate this Agreement upon thirty (30) days written notice. Following notice of such termination, CONTRACTOR shall promptly cease work and notify COUNTY as to the status of its performance.

Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for service performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY shall be final. The foregoing is cumulative and shall not effect any right or remedy which COUNTY may have in law or equity.

2. For Cause. Should CONTRACTOR default in the performance of this Agreement or materially breach any of its provisions, COUNTY may, at COUNTY's sole option, terminate this Agreement by written notice, which shall be effective upon receipt by CONTRACTOR.

B. **By CONTRACTOR.** Should COUNTY fail to pay CONTRACTOR all or any part of the payment set forth in EXHIBIT B, CONTRACTOR may, at CONTRACTOR'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.

18. **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.

19. **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.

20. **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.

21. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

22. **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.

23. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties 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.

24. **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.

25. **COMPLIANCE WITH LAW.** CONTRACTOR shall, at his 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 CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY be a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

26. **CALIFORNIA LAW.** 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.

27. **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.

28. **AUTHORITY.** All 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, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

29. **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 for Services of Independent Contractor between the **Santa Barbara County Flood Control and Water Conservation District** and **OST Trucks and Cranes, Inc.**

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

SANTA BARBARA COUNTY FLOOD CONTROL &
WATER CONSERVATION DISTRICT

By: _____
Chair, Board of Directors

Date: _____

ATTEST:
CHANDRA L. WALLAR
CLERK OF THE BOARD

CONTRACTOR
OST Trucks and Cranes. Inc.

By: _____
Deputy

By: Jojo
Title: President

APPROVED AS TO FORM:
DENNIS MARSHALL
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W GEIS, CPA
AUDITOR-CONTROLLER

By: [Signature]
Deputy County Counsel

By: [Signature]
Deputy

DEPT: 054
ACCT: 7701
FUND: 2610
PROGRAM: 3002

APPROVED AS TO FORM:
RAY AROMATORIO, ARM, AIC
RISK MANAGER

By: [Signature]

EXHIBIT A

STATEMENT OF WORK

The contractor agrees to provide heavy crane services in accordance with the following specifications:

1. HOURLY RATES

The contractor shall supply any necessary labor, operators, and supplies to operate the equipment at the site. The contractor shall be compensated only for the hours that work is actually performed. No compensation will be allowed for mechanical failure, maintenance, or other down time.

2. MOBILIZATION COSTS

Mobilization costs shall be negotiated separately at the time of a job. Include all costs involved in transporting the equipment to and from the site, all set up and break down costs, and all of the labor and supplies necessary to prepare the equipment for work.

3. EXCAVATION BUCKETS

Included in the quoted hourly rate, the contractor shall provide an excavation bucket (clam shell or dragline) of equal or less size as determined by the District. The required bucket shall conform as follows:

CONVENTIONAL CRANES

CRANE SIZE	CLAM BUCKET	DRAGLINE BUCKET
200 ton crane	<u>4 yd.</u>	<u>4 yd.</u>
175 ton crane	<u>3 yd.</u>	<u>3 yd.</u>
140 ton crane	<u>2 yd.</u>	<u>2 yd.</u>
100 ton crane	<u>2 yd.</u>	<u>2 yd.</u>
75 ton crane	<u>2 yd.</u>	<u>2 yd.</u>
40 ton crane	<u>1-3/4 yd.</u>	<u>1-3/4 yd.</u>
Other (specify)	_____	_____
_____	_____	_____

Rock tongs may be required for certain jobs. Indicate the size available in the "other" area as well as any other specialty items you have such as man-baskets, etc.

HYDRO CRANES

CRANE SIZE	CLAM BUCKET
------------	-------------

(Co of SB Std Terms Ver 4-21-95)

175 ton crane	<u>2 yd.</u>
100 ton crane	<u>2 yd.</u>
90 ton crane	<u>2 yd.</u>
75 ton crane	<u>1½ yd.</u>
70 ton crane	<u>1½ yd.</u>
45 ton crane	<u>1 yd.</u>
40 ton crane	<u>1 yd.</u>
35 ton crane	<u>1 yd.</u>
15 ton crane	<u>½ yd.</u>

4. BONDS

No bonds are required for this contract.

5. PAYMENT

The contractor shall submit monthly invoices for the work actually completed and accepted by the District for the previous month. The mobilization costs will be paid with the last invoice at the completion of any given job. Should the contractor fail to complete the job or removes his equipment prior to completion of the work, the mobilization costs will be forfeited.

6. POTENTIAL RATE ADJUSTMENT BASED ON FUEL PRICE

During the life of this contract, the District will adjust the hourly rate for service due to changes in the cost of fuel. If the cost of fuel goes up (or down) more than 15% of the price of fuel on August 18, 2009 the District will adjust the hourly rate paid by 4% accordingly. The adjustment rate is less than the change of fuel cost since fuel is only one factor in the cost of providing this service.

7. SUBCONTRACTORS

The Contractor in submitting a Proposal agrees to use only his equipment for any work authorized by the District. No Subcontracting of services will be allowed under this agreement.

8. INSURANCE

The Contractors attention is directed to EXHIBIT C of the "Agreement for Services of Independent Contractor". The selected contractor will have to be able to provide the required insurance prior to entering into an agreement.

9. NONCOLLUSION AFFIDAVIT

Each bidder shall execute and submit with the bid the Noncollusion Affidavit included in the bid forms in conformance with Section 7106 of the Public Contract Code.

EXHIBIT B

PAYMENT ARRANGEMENTS

Periodic Compensation (with attached Schedule of Fees)

- A. For CONTRACTOR services to be rendered under this contract, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed **\$ 300,000**.
- B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **Attachment B1** (Schedule of Fees). Invoices submitted for payment that are based upon **Attachment B1** must contain sufficient detail to enable an audit of the charges and provide supporting documentation if so specified in **EXHIBIT A**.
- C. **Monthly**, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory and within the cost basis of **Attachment B1** shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of presentation.
- D. 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 CONTRACTOR to correct such work or billings or seek any other legal remedy.

ATTACHMENT B1

OST Trucks and Cranes, Inc.

EXHIBIT B

**PROPOSAL FORM
CRANE MASTER SERVICES AGREEMENT**

The undersigned contractor agrees to provide heavy crane services on an as need basis for the Fiscal Years 2011/12 and 2012/13.

CONVENTIONAL CRANES

CRANE SIZE	REGULAR HOURLY RATE	SATURDAY RATE	SUNDAY/HOLIDAY RATE	NUMBER AVAILABLE
200 ton crane	\$ <u>N/A</u>	\$ _____	\$ _____	_____
175 ton crane	\$ <u>N/A</u>	\$ _____	\$ _____	_____
140 ton crane	\$ <u>365.00</u>	\$ <u>425.00</u>	\$ <u>485.00 / \$ 565.00</u>	<u>1</u>
100 ton crane	\$ <u>330.00</u>	\$ <u>390.00</u>	\$ <u>450.00 / \$ 530.00</u>	<u>2</u>
75 ton crane	\$ <u>N/A</u>	\$ _____	\$ _____	_____
40 ton crane	\$ <u>N/A</u>	\$ _____	\$ _____	_____
Other (specify)				
_____	\$ _____	\$ _____	\$ _____	_____
<u>60 ton crane</u>	\$ <u>320.00</u>	\$ <u>380.00</u>	\$ <u>440.00 / \$ 520.00</u>	<u>1</u>

HYDRO CRANES

175 ton crane	\$ <u>410.00</u>	\$ <u>470.00</u>	\$ <u>530.00 / \$ 610.00</u>	<u>1</u>
100 ton crane	\$ <u>321.00</u>	\$ <u>381.00</u>	\$ <u>441.00 / \$ 521.00</u>	<u>1</u>
90 ton crane	\$ <u>316.00</u>	\$ <u>376.00</u>	\$ <u>436.00 / \$ 516.00</u>	<u>2</u>
75 ton crane	\$ <u>313.00</u>	\$ <u>373.00</u>	\$ <u>433.00 / \$ 513.00</u>	<u>1</u>
70 ton crane	\$ <u>307.00</u>	\$ <u>367.00</u>	\$ <u>427.00 / \$ 507.00</u>	<u>1</u>
45 ton crane	\$ <u>280.00</u>	\$ <u>340.00</u>	\$ <u>400.00 / \$ 480.00</u>	<u>3</u>
35 ton crane	\$ <u>205.50</u>	\$ <u>235.50</u>	\$ <u>265.50 / \$ 305.50</u>	<u>2</u>
15 ton crane	\$ <u>185.00</u>	\$ <u>315.00</u>	\$ <u>245.00 / \$ 285.00</u>	<u>2</u>
Other (specify)				
<u>65 RT</u>	\$ <u>255.50</u>	\$ <u>285.50</u>	\$ <u>315.50 / \$ 355.00</u>	<u>1</u>
120 Ton	\$ <u>345.00</u>	\$ <u>405.00</u>	\$ <u>465.00 / \$ 545.00</u>	<u>1</u>
150 Ton	\$ <u>375.00</u>	\$ <u>435.00</u>	\$ <u>495.00 / \$ 575.00</u>	<u>1</u>
210 Ton	\$ <u>445.00</u>	\$ <u>505.00</u>	\$ <u>565.00 / \$ 645.00</u>	<u>1</u>
250 Ton	\$ <u>465.00</u>	\$ <u>525.00</u>	\$ <u>585.00 / \$ 665.00</u>	<u>1</u>

EXHIBIT C

STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS for contracts NOT requiring professional liability insurance

INDEMNIFICATION

CONTRACTOR shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the COUNTY.

CONTRACTOR shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

Without limiting the CONTRACTOR's indemnification of the COUNTY, CONTRACTOR shall procure the following required insurance coverages at its sole cost and expense. All insurance coverage is to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the COUNTY, CONTRACTOR shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.
2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CONTRACTOR in the indemnity and hold harmless provisions of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTORS shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the

policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory."

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated County representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.

In the event the CONTRACTOR is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the CONTRACTOR'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.