

## AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

**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 Thomas Figg having his principal place of business at 204 Willowbrook Drive, Port Hueneme, California 93041 (hereafter "Contractor") wherein Contractor agrees to provide and County agrees to accept the services specified herein.

### RECITALS

The County and the Contractor has a pre-existing contractual relationship under County Purchase Order contract number CN-07721 wherein the County authorized Contractor to render professional planning services on the Santa Barbara Ranch project beginning June 12, 2007. Contract number CN-07721 has a not-to-exceed limit of \$100,000.00, and under that contract, \$88,777.45 has been expended to date. Additional work is required on the Santa Barbara Ranch project, and this new contract shall provide an additional \$100,000 of funding to complete work on the Santa Barbara Ranch project. The parties expressly agree that all obligations and warranties under the prior agreement shall survive unless expressly superseded by this Agreement.

**NOW, WHEREAS**, Purchase Order contract number CN-07721 provided prior contractual authorization for Contractor to render professional planning services on the Santa Barbara Ranch project; and

**WHEREAS**, \$88,777.45 of the \$100,000.00 not-to-exceed amount under contract number CN-07721 has been expended thus far; and

**WHEREAS**, an additional \$100,000.00 of funding is necessary to complete work on the Santa Barbara project; and

**WHEREAS**, County and Contractor have agreed that all obligations and warranties under contract number CN-07721 shall remain in full force and effect, unless expressly superseded by this Agreement; and

**WHEREAS**, County and Contractor have agreed to perform their respective duties and obligations as described in this Agreement,

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

1. **DESIGNATED REPRESENTATIVE**. Dianne Black at phone number (805) 568-2086 is the representative of County and will administer this Agreement for and on behalf of County. Thomas Figg at phone number (805) 377-9116 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: County of Santa Barbara  
Planning and Development  
123 East Anapamu Street  
Santa Barbara, CA 93101  
Attn: Elisa Moser

To Contractor: Thomas Figg Consulting Services  
204 Willowbrook Drive  
Port Hueneme, CA 93041

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 November 18, 2008 and end performance upon completion, but no later than December 31, 2009 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 in Exhibit B, payment shall be net thirty (30) days from presentation of invoice. County Director of Planning and Development may make increased compensation to Contractor up to a total of \$25,000.00 above the Contract Amount. For changes requiring additional compensation to Contractor beyond the total \$25,000.00 (above Contract Amount) authorization must be obtained from the Board of Supervisors. In no event may any change to compensation be made without written approval by County.

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

The term "organizational conflict of interest" means that a relationship exists whereby Contractor has interests which may diminish the capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product or may result in an unfair competitive advantage.

Contractor agrees that if an organizational conflict of interest is discovered with respect to this Agreement, Contractor shall make an immediate and full disclosure in writing to County which shall include a description of the action which the Contractor has taken or proposes to take to avoid, eliminate or neutralize the conflict. County may, however, terminate the Agreement if it could be in the best interests of the County.

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.

30. **SUBCONTRACTORS.** Contractor is authorized to subcontract with subcontractors identified in Contractor's Proposal. Contractor shall be fully responsible for all services performed by its subcontractor. Contractor shall secure from its subcontractor all rights for County in this Agreement, including audit rights.

31. **HANDLING OF PROPRIETARY INFORMATION.** Contractor understands and agrees that certain materials which may be provided may be classified and conspicuously labeled as proprietary confidential information. That material is to be subject to the following special provisions:

A. All reasonable steps will be taken to prevent disclosure of the material to any person except those personnel of Contractor working on the project who have a need to use the material.

B. Upon conclusion of Contractor's work, Contractor shall return all copies of the material direct to party providing such material. Contractor shall contact County to obtain the name of the specific party authorized to receive the material.

32. **IMMATERIAL CHANGES.** Contractor and County agree that immaterial changes to the work program (time frame and mutually agreeable work program changes which will not result in the change to the total contract amount) may be authorized by the Director of Planning and Development, or designee in writing, and will not constitute an amendment to the Agreement.

33. **NEWS RELEASES/INTERVIEWS.** Contractor agrees for itself, its agents, employees and subcontractors, it will not communicate with representatives of the communications media concerning the subject matter of this Agreement without prior written approval of the County Project Coordinator. Contractor further agrees that all media requests for communication will be referred to County's responsible personnel.

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The parties hereto, having read in its entirety, this Agreement for Services of Independent Contractor between the County of Santa Barbara and Thomas Figg, do agree thereto in each every particular term and covenant.

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

COUNTY OF SANTA BARBARA

By: \_\_\_\_\_  
Chair, Board of Supervisors

Date: \_\_\_\_\_

ATTEST:  
MICHAEL F. BROWN  
CLERK OF THE BOARD

CONTRACTOR

By: \_\_\_\_\_  
Deputy

By: \_\_\_\_\_  
Soc Sec or Tax ID Number: \_\_\_\_\_

APPROVED AS TO FORM:  
DENNIS A. MARSHALL  
COUNTY COUNSEL

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

By: \_\_\_\_\_  
Deputy County Counsel

By: \_\_\_\_\_  
Deputy

APPROVED AS TO INSURANCE:  
RAY AROMATORIO  
RISK PROGRAM MANAGER

By: \_\_\_\_\_  
Risk Management

## EXHIBIT A

### STATEMENT OF WORK

#### **SANTA BARBARA RANCH PROJECT**

**Project Understanding:** The Santa Barbara Ranch Project consists of a 71-unit large lot residential development along the Gaviota Coast approximately two miles west of the City of Goleta encompassing portions of Santa Barbara Ranch and Dos Pueblos Ranch, together totaling 3,249 acres and 85% of the lots comprising the Official Map of Naples Townsite. The complexity of legislative and quasi-adjudicative actions required to undertake the Project entails extensive coordination with an assortment of County departments and outside governmental agencies, as well as regular interface with the property owner representatives and County Counsel. Working in concert with the assigned personnel of the Planning and Development Department, the Contractor's fundamental task will be to provide project management services leading to timely completion of the permit process including requisite approvals from the Coastal Commission and Department of Conservation, condition compliance and issuance of zoning clearances.

**Consultant Tasks:** Provide project management services on an on-going, as needed and authorized basis. Tasks include: application processing through the Coastal Commission, Department of Conservation, Cal Trans and other permitting agencies; completion of Preliminary and Final Design Review through CBAR; establishment and implementation of a Environmental Quality Assurance Program; condition compliance requisite to granting final land use clearances and approvals; coordination of paralegal services for constructing the administrative record; provision of Court testimony and support services in defense of litigation filed in association with the Project (if any); keeping management staff apprised of project status and compliance issues; and furnishing specialized services as required.

**Task Execution:** Contractor shall avail himself on an "as needed" basis to undertake the services outlined above and provide the County with regular reports and updates on Project status; provided, further, that consultation and work assignments shall be scheduled and undertaken at the mutual convenience of the parties. For the duration of this Agreement, Contractor agrees that it will not contract with any other party regarding the Project. All work tasks will be completed in accordance with the policy direction of the County. Contractor will make no representations on behalf of the County without the County's permission and concurrence. All work products prepared by the Contractor shall be on electronic media in Microsoft Office and PowerPoint file formats. One original of all reports and documents shall be submitted in final proof, camera ready state, sufficient for printing in 8 ½ x 11 inch format.

**Confidentiality:** Contractor, and each of its officers, employees and agents, shall not disclose any confidential information received during the scope of work, to non-parties or others not legally obligated to honor the confidentiality provisions herein. Recipient of confidential information shall keep the information confidential and use the confidential information only for the purpose of supporting this project. Confidential information include but are not limited, to materials produced at the direction of counsel or in preparation for litigation, regardless of whether the confidential information was disclosed in writing, orally or in any other manner and which is identified as confidential at the time of disclosure.

## EXHIBIT B

### PAYMENT ARRANGEMENTS Periodic Compensation

- A. For CONTRACTOR services to be rendered under this contract, CONTRACTOR shall be paid at an hourly rate of \$120.00 per hour, with the total contract amount, including cost reimbursements, not to exceed \$ **100,000.00**. Pursuant to Section 32 of the foregoing Agreement, the Director of Planning and Development may approve changes to the hourly rate so long as the change does not result in a change to the total contract amount (\$100,000.00).
- B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR'S satisfactory performance of work performed in accordance with the Scope of Work (Exhibit A).
- C. CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE monthly invoices 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 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.

# EXHIBIT C

## STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS for contracts REQUIRING professional liability insurance

### INDEMNIFICATION

#### **Indemnification pertaining to other than Professional Services:**

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.

#### **Indemnification pertaining to Professional Services:**

CONTRACTOR shall 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 the negligent performance or attempted performance of the provisions hereof; including any willful or negligent act or omission to act on the part of the CONTRACTOR or his agents or employees or other independent contractors directly responsible to him to the fullest extent allowable by law.

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 non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."*

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.

3. Professional Liability Insurance. Professional liability insurance shall include coverage for the activities of CONTRACTOR'S professional staff with a combined single limit of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Said policy or policies shall provide that COUNTY shall be given thirty (30) days written notice prior to cancellation, expiration of the policy, or reduction in coverage. If the policy providing professional liability coverage is a on 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three (3) years (ten years [10] for Construction Defect Claims) following completion of the performance or attempted performance of the provisions of this agreement.

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.

## **EXHIBIT D**

### **YEAR 2000 DATE CHANGE COMPLIANCE WARRANTY FOR GOODS AND SERVICES**

CONTRACTOR warrants that any Products furnished by CONTRACTOR pursuant to this agreement shall support a four-digit year format and be able to accurately process date and time data from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, as well as leap year calculations. For purposes of this warranty, "PRODUCT" shall include, without limitation, any piece of component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components of subroutines therein together with updates, upgrades and enhancements on same and all services, wherever such compliance is appropriate. This warranty shall survive termination or expiration of this Agreement.

In the event of any decrease in Product functionality or accuracy related to time and/or date data related codes and/or internal subroutines that impede the Product from operating correctly using dates beyond December 31, 1999, CONTRACTOR shall restore or repair the Product to the same level of functionality as existed prior to the date malfunction, so as to minimize interruption to COUNTY's ongoing business processes, time being of the essence. In the event that such warranty compliance requires the acquisition of additional Products, the expense for any such associated or additional acquisitions that may be required, including without limitations, data conversion tools, shall be borne exclusively by CONTRACTOR.

In the event that restoration, repair and/or replacement is inadequate to prevent or remedy loss, CONTRACTOR shall defend, indemnify and save harmless COUNTY, its agents, officers, and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of the failure of this warranty or occasioned by the performance or attempted performance of the Product(s), including, but not limited to, any act or omission to act on the part of CONTRACTOR or its agents, officers, employees or independent contractors.

Nothing in this warranty shall be construed to limit any rights or remedies the COUNTY may otherwise have under this Agreement with respect to defects other than Year 2000 performance. CONTRACTOR shall obtain the same assurances from all other suppliers whose products CONTRACTOR relies upon for operation of CONTRACTOR's Product(s) and shall furnish them to COUNTY upon request.