

ORIGINAL

**PROFESSIONAL SERVICES AGREEMENT**

**Between**

**COUNTY OF HUMBOLDT**

**And**

**NICHOLS, MELBURG & ROSSETTO ARCHITECTS**

**For the**

**County of Humboldt Juvenile Hall Replacement Facility Construction Project**

**County Project Number: 170212**

**Amount**

**\$1,264,898**

**Dated** June 27, 2017

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, dated this 27<sup>th</sup> day of June, 2017 ("Contract Date"), is by and between NICHOLS, MELBURG & ROSSETTO ARCHITECTS, a corporation organized and existing under the laws of California, whose place of business is located at 300 Knollcrest Drive, Redding, California 96002, ("Consultant"), and the COUNTY OF HUMBOLDT, a political subdivision of the State of California, ("County").

### RECITALS

The County desires to replace the existing Juvenile Hall with a new full service, medium / maximum security Juvenile Hall. The work is hereinafter referred to as the Project, and County desires to have services performed in accordance with County's needs.

The doing of such work involves the performance of professional and technical services of a temporary and occasional character, and County has no employees available to perform such services and is unable to hire employees for the performance thereof for this temporary period.

Consultant is a Professional Architect, licensed as such under the laws of the State of California, and Consultant represents that it is qualified to perform said services.

WHEREAS, CONSULTANT is willing and able to perform the duties and render the services as more specifically outlined elsewhere in this Agreement; and

WHEREAS, Pursuant to Government Code 31000, COUNTY may retain independent contractors to perform special services for COUNTY or any COUNTY department; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, stipulated and agreed, Consultant and County agree on the following:

### AGREEMENT

#### 1 SCOPE OF AGREEMENT

1.1 This Agreement sets forth the terms and conditions under which Consultant will furnish professional services to County for the Project defined herein.

1.2 This Agreement consists of this Agreement Form and the following Appendices and Attachments, referred to throughout this Agreement and incorporated herein by this reference:

Appendix A: Terms and Conditions of the Services  
Appendix B: Scope of Services  
Appendix C: Compensation  
Appendix D: Consultant's Staffing Plan  
Appendix E: Project Completion and Review Schedule  
Appendix F: Insurance Requirements

Attachment I: Scope of Work and Project Impact  
Attachment II: Project Timeline and Administrative Plan

1.3 The Appendices and Attachments in this Agreement may not be changed, modified or supplemented, except as set forth in this Agreement Form or in a writing annexed hereto and identified as an Exhibit, signed by Consultant and County.

## **2 PROJECT DESCRIPTION:**

- 2.1 This Agreement is for professional services in connection with the following Project, referred to herein as the "Project": The County of Humboldt desires to replace the existing Juvenile Hall with a new full service, medium / maximum security Juvenile Hall containing a 30-bed, podular housing unit configuration, support space, and vehicle sallyport. The construction project will occur in our existing Juvenile Hall's outdoor recreation field. The construction work will need to be sequenced to maintain operations in the existing facility which will be demolished at occupancy of the new facility.

## **3 PROGRAM REQUIREMENTS**

- 3.1 ATTACHMENT I - Scope of Work and Project Impact

- 3.2 ATTACHMENT II - Project Timeline and Administrative Plan

- 3.3 Sustainable Design

3.3.1 County is committed to environmental, economic and social stewardship through sustainable building practices for County facilities and buildings. Thorough consideration shall be given to high-efficiency low energy-consuming mechanical systems, passive energy reduction techniques, such as use of natural ventilation and abundant interior daylight systems wherever practicable.

3.3.2 Life cycle cost analyses shall be conducted at milestone points in the Project Schedule to assure County of its goal to achieve the highest, most cost-effective environmental performance possible over the life of the building.

- 4 **SCOPE OF SERVICES:** Consultant's scope of services for the Project described herein ("Services"), and covered by this Agreement, shall consist of performing all Services and supplying all Deliverables described in *Appendix B: Scope of Services*.

- 5 **SCHEDULE FOR PERFORMING THE SERVICES.** For the Project, Consultant shall perform the Services per the Project Design Schedule described in *Appendix E: Project Completion and Review Schedule*.

- 5.1 The term of this Agreement shall be for 1,690 calendar days beginning as of April 8<sup>th</sup>, 2014 and ending 1,690 (one thousand six hundred ninety) calendar days later.

- 5.2 Notwithstanding the foregoing, County shall not be obligated for payments hereunder for any future fiscal year unless or until County's Board of Supervisors appropriates funds for this Agreement in County's budget for the fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds for this Agreement were appropriated. County shall notify CONSULTANT, in writing, of such non-appropriation at the earliest possible date. However, any term herein which by its nature extends beyond the end or termination of this Agreement, remains in effect until fulfilled (including, without limitation, unfulfilled payment obligations, and outstanding liabilities).

- 6 **COMPENSATION FOR THE SERVICES.** Compensation for the Services shall be administered under the terms of *Appendix C: Compensation*, with the basis of payment, a Fixed Fee of \$1,264,898

**7 STAFFING FOR THE SERVICES**

7.1 Consultant shall provide County with professional personnel identified in *Appendix D: Consultant's Staffing Plan*, in compliance with the terms therein, to include:

<u>Personnel</u>	<u>Assignments</u>
<u>Les Melburg</u>	<u>Principal-In-Charge</u>
_____	<u>Lead Designer</u>
<u>Kyle Matti</u>	<u>Project Architect</u>

7.2 Consultant shall engage subconsultants identified in *Appendix D: Consultant's Staffing Plan*, in compliance with the terms therein, to include:

<u>Subconsultants</u>	<u>Scope</u>	<u>Lead Designer</u>
Lionakis	Juvenile Facility Planning	Maynard Feist
NMR Structural	Structural Engineering	John Corless
Whitchurch	Civil Engineering	Darren Tully
Costa Engineers	Mechanical & Plumbing Engineer	Antonia Costa
Ken Rubitsky & Associates	Electrical Engineer	Ken Rubitsky
HLA Group	Landscape Architecture	Steven Canada
PCI	Security Electronics	Rob Pennell
Sierra West Group	Cost Consulting	John Moreno
The Marshall Associates, Inc.	Foodservice Design	Mark Walsh

**8 PROJECT REPRESENTATIVES FOR THE SERVICES**

8.1 County's and Consultant's representatives, authorized to act on their behalf with respect to this Agreement, and to receive and provide notices, are as follows:

8.1.1 County's Representative:

Thomas K. Mattson, Director of Public Works  
Humboldt County Public Works  
1106 Second Street  
Eureka, CA 95501  
Phone: (707) 445-7491                      Fax: (707) 445-7409

8.1.2 Consultant's Authorized Representative:

Les Melburg, Principal-In-Charge  
Nichols, Melburg & Rossetto Architects  
300 Knollcrest Drive  
Redding, CA 96002  
Phone: (530) 222-3300                      Fax: (530) 222-3538

**9 INSURANCE REQUIRED FOR THE SERVICES.** Consultant shall, at all times, maintain the insurance coverage required under Appendix F: Insurance, in the following amounts:

- 9.1 Comprehensive or Commercial General Liability Insurance: \$2,000,000 per occurrence.
- 9.2 Automobile and Liability Insurance: \$1,000,000 combined single limit coverage.

- 9.3 Workers Compensation Insurance (if required by California law) and Employer Liability Insurance: \$1,000,000 per accident for bodily injury and disease.
- 9.4 Professional Liability Insurance: \$2,000,000 combined single limit coverage.
- 9.5 Environmental Impairment Liability Insurance (if applicable): \$1,000,000 per claim; \$2,000,000 annual aggregate.

**10 MISCELLANEOUS**

- 10.1 This Agreement shall become effective upon its execution by Consultant and by County. All Services, as defined herein, whenever performed, shall be deemed performed under this Agreement.
- 10.2 In order to induce County to enter into this Agreement, Consultant represents that it is duly organized, existing and in good standing under applicable state law; Consultant is licensed to perform all aspects of the Work; Consultant will employ only persons and subconsultants with all required licenses and certifications; that Consultant is duly qualified to conduct business in the State; that Consultant has duly authorized the execution, delivery and performance of this Agreement and the Services to be performed herein; and that the Agreement does not violate or create a default under any instrument, agreement, order or decree binding on Consultant.
- 10.3 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of County or acting as an employee, agent, or representative of County, liable on this Agreement or any of the Appendices, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of County is limited and confined to such liability as authorized or imposed by the Agreement, the Appendices or applicable law.


IN WITNESS WHEREOF the parties have executed this Agreement in duplicate as of the dates identified below.

COUNTY: (SEAL)

COUNTY OF HUMBOLDT  
STATE OF CALIFORNIA

ATTEST:

CLERK OF THE BOARD:

By: [Signature]

COUNTY:

CHAIR, BOARD OF SUPERVISORS:

By: [Signature]  
Chair

Date: 6/27/17

APPROVED AS TO FORM:

By: N/A  
Deputy County Counsel

INSURANCE CERTIFICATES REVIEWED AND APPROVED:

By: [Signature]  
RISK MANAGER

CONSULTANT: NICHOLS, MELBURG & ROSSETTO ARCHITECTS:

By: [Signature]  
[Signature]

Dan Rossetto  
[Please print name of Signer here]

Title: President  
[Please print Title of Signer: If Corporate: Chairman, President or Vice President]

Date: 6.6.2017

By: [Signature]  
[Signature]

Les Melburg  
[Please print name of Signer here]

Title: Secretary  
[Please print Title of Signer: If Corporate: Secretary, Assistant Secretary, CFO or Assistant Treasurer]

Date: 6.5.2017

END OF AGREEMENT FORM

## APPENDIX A: TERMS AND CONDITIONS OF THE SERVICES

This is an appendix attached to, and made a part of, the Professional Services Agreement (“**Agreement**”) between the County and Consultant, for the provision of professional services (“**Services**”).

- 1 **Entire Agreement.** This Agreement and any written modification shall represent the entire and integrated agreement between the parties hereto regarding the subject matter of this Agreement, shall constitute the exclusive statement of the terms of the parties’ agreement, and shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification. All prior negotiations are merged into this Agreement.
- 2 **Communications.** For purposes of this Agreement, County shall direct all communications to Consultant through Consultant’s designated Project Representative. Consultant shall direct all communications to County through County’s designated Project Manager. Consultant may not change its Authorized Representative without the prior written consent of County, which may be withheld or delayed in County’s sole discretion. Communications shall be in writing and serialized by topic for proper billing, retrieval and record keeping.
- 3 **Notices.** County and Consultant shall provide notices identified in this Agreement in the form of a writing, sent by certified mail, return receipt requested, or by overnight courier or delivery service with signature required, to the authorized representatives of each party at the following addresses:

**ARCHITECT:**

Les Melburg, Principal-In-Charge  
Nichols, Melburg & Rossetto Architects  
300 Knollcrest Drive  
Redding, CA 96002

**COUNTY:**

Thomas K. Mattson, Director of Public Works  
Humboldt County Public Works  
1106 Second Street  
Eureka, CA 95501

Notices shall be in the form of written correspondence signed by a party’s authorized representative and shall be effective upon receipt if hand delivered. If delivered electronically as a PDF image, then notice shall be effective upon receipt of return email acknowledgment of receipt, upon receipt if delivered by overnight courier or delivery service, and three business days after mailing by certified mail.

- 4 **Standard of Performance.** Consultant represents that it possesses all necessary training, licenses and permits to perform the Services, and that its performance of the Services will conform to the standard of practice of a professional that specializes in performing professional services of like nature and complexity of the Services.
- 5 **No Waiver.** The granting of any payments, and any inspections, reviews, approvals or oral statements by any County representative, or certification by any governmental entity, shall in no way limit Consultant’s obligations under this Agreement. Either party’s waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of this Agreement, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party’s right thereafter to enforce or compel strict compliance with every provision hereof. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of County and Consultant.
- 6 **Independent Contractor.** Consultant shall at all times be deemed an independent contractor wholly responsible for the manner in which it performs the Services, and fully liable for the acts and omissions of its employees, subconsultants and agents. Under no circumstances shall this Agreement be construed as creating an employment, agency, joint venture or partnership

relationship between County and Consultant, and no such relationship shall be implied from performance of this Agreement. Terms in this Agreement referring to direction from County shall be construed as providing for direction as to policy and the result of services only, and not as to means and methods by which such a result is obtained. Consultant shall pay all taxes (including California sales and use taxes) levied upon this Agreement, the transaction, or the Services and/or goods delivered pursuant hereto without additional compensation, regardless of which party has liability for such tax under applicable law, and any deficiency, interest or penalty asserted with respect thereto. The Consultant shall pay all other taxes including but not limited to any applicable City business tax, not explicitly assumed in writing by County hereunder. The Consultant shall comply with all valid administrative regulations respecting the assumption of liability for the payment of payroll taxes and contributions as above described and to provide any necessary information with respect thereto to proper authorities.

## **7 Indemnification and Liability.**

- 7.1 Defense and Indemnification for Design Professional Services: To the fullest extent permitted by law, and in accordance with Civil Code §2782.8, Consultant shall indemnify, defend (with legal counsel reasonably acceptable to County) and hold harmless County, its officers, agents and employees, from any claim, liability, loss, injury or damage (collectively, "Litigation") that arises out of, pertains to, relates to, or is connected with, performance of this Agreement due to the negligence, recklessness, or willful misconduct of Consultant and/or its agents, employees or subconsultants. Consultant shall reimburse County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any Litigation in which Consultant is obligated to indemnify, defend and hold harmless County under this Agreement.
- 7.2 Defense and Indemnification for Non-Design Professional Services: Consultant shall hold harmless, defend and indemnify County and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of Litigation) of every nature arising out of or in connection with Consultant's performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the County. Consultant shall reimburse County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any Litigation in which Consultant is obligated to indemnify, defend and hold harmless County under this Agreement.
- 7.3 Consultant shall place in its subconsulting agreements and cause its subconsultants to agree to indemnities and insurance obligations in favor of County and other Indemnitees in the exact form and substance of those contained in this Agreement.

## **8 Conflict of Interest.**

- 8.1 Consultant represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections.
- 8.2 Consultant represents that it has completely disclosed to County all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of County, or other officer, agent or employee of County or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by County for cause. Consultant agrees to comply with all conflict of interest codes adopted by County and its reporting requirements.
- 8.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with County that Consultant



has no present, and will have no future, conflict of interest between providing County the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to County, as determined in the reasonable judgment of County. The provisions of this Section shall remain fully effective indefinitely after termination of Services to County hereunder.

- 8.4 Consultant shall not employ, or attempt to employ, any person who is or was employed by County at any time that this Agreement is in effect, during the term of this Agreement and for a period of six months after the termination of this Agreement or the completion of the Work, without the written consent of the County.
- 8.5 Consultant and County agree that Consultant's unique talents, knowledge and experience form a basis for this Agreement and that therefore the services to be performed by Consultant under this Agreement are personal in character and neither this Agreement nor any duties or obligations hereunder shall be assigned or delegated by Consultant unless approved by written instrument executed and approved in the same manner as this Agreement.
- 8.6 The provisions of this Section shall remain fully effective indefinitely after termination of Services to County hereunder.
- 9 Equal Employment Opportunity Practices Provision.** Consultant shall comply with Title VII of the Civil Rights Act of 1964 and no person shall, on the grounds of race, religion or religious creed, color, age (over 40), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), military service, or any other classification protected by federal, state, or local laws and ordinances be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
- 10 Confidentiality.** Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by County and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to County. Consultant agrees that all information disclosed by County to or discovered by Consultant shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to County's interests where such confidential information could be used adversely to County's interests. Consultant agrees to notify County immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with this Agreement. These provisions shall remain fully effective indefinitely after termination of Services to County hereunder.
- 11 Publicity.** Any publicity or press releases with respect to the Project or Services shall be under County's sole discretion and control. Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without County's prior written consent. Consultant shall have the right, however, without County's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement. These provisions shall remain fully effective indefinitely after termination of Services to County hereunder.
- 12 Ownership of Work Product.** Any interest (including copyright interests) of Consultant or its subconsultants, in studies, reports, memoranda, computational sheets, plans, plans or any other

documents (including electronic media) prepared by Consultant or its subconsultants at any time in connection with the Services, shall be, immediately upon its creation, the property of County. To the extent permitted by Title 17 of the United States Code, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of County. In the event that it is ever determined that any works and any former works created by Consultant or its subconsultants under this Agreement are not works for hire under U.S. law, Consultant hereby assigns to County all copyrights to such works when and as created. With County's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

- 13 Audit/Inspection of Records.** Consultant shall maintain all documents and records prepared by or furnished to Consultant during the course of performing the Services for at least three (3) years following completion of the Services, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. Such records include, but are not limited to, correspondence, internal memoranda, calculations, books and accounts, accounting records documenting its work under its Agreement, and invoices, payrolls, records and all other data related to matters covered by this Agreement. Consultant shall permit County to audit, examine and make copies, excerpts and transcripts from such records, and the Consultant shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any matter whatsoever for three (3) years after County makes the final or last payment or within three (3) years after any pending issues between County and Consultant with respect to this Agreement are closed, whichever is later.
- 14 Suspension and Termination of Services.** (i) County may direct Consultant to suspend, delay or interrupt Services, in whole or in part, for such periods of time as County may determine in its sole discretion. County may issue such directives without cause. County will issue such directives in writing. Suspension of Services shall be treated as an excusable delay. (ii) County may terminate performance of the Services under this Agreement in whole, or from time to time in part, for default, should Consultant commit a material breach of this Agreement, or part thereof, and not cure such breach within ten (10) calendar days of the date of County's written notice to Consultant demanding such cure. In the event County terminates this Agreement for default, Consultant shall be liable to County for all loss, cost, expense, damage and liability resulting from such breach and termination. (iii) County may terminate performance of the Services under this Agreement in whole, or from time to time in part, for convenience, whenever County determines that such termination is in County's best interests. In the event County terminates this Agreement for convenience, Consultant shall be entitled to recover its costs expended up to the termination plus reasonable profit thereon to the termination date, but may recover no other loss, cost, damage or expense.
- 15 Notice of Disputes.** In the event of any dispute between Consultant and County regarding any claim, demand or request by Consultant for time, money, or additional compensation for any reason whatsoever (including, without limitation, any alleged failure of County to make a decision), Consultant shall submit to County, within 21 days of Consultant's first knowledge of the dispute, a written description of Consultant's claim, demand or request that provides a narrative of the pertinent events, the contractual basis of the Consultant's position, pricing calculations (if applicable) and attaches supporting documentation. County will then review the issue and make a decision thereon. If Consultant shall fail to provide timely notice of any such claim, demand or request, then Consultant shall waive its rights to such claim, demand or request, unless Consultant can demonstrate a manifest lack of prejudice to County resulting from such late notice. Consultant shall continue its work throughout the course of any dispute, and Consultant's failure to continue work during a dispute shall be a material breach of this Agreement.

- 16 Attorney Fees on Breach.** Consultant and County each agree that in the event any action, suit or proceeding be commenced to complete the performance of this Agreement or to seek damages for breach thereof, it will pay reasonable attorney's fees (including reasonable value of services rendered by County Counsel) to the prevailing party, to be awarded and fixed by the court, and to be taxed as cost and to be included in the judgment thereon rendered.
- 17 Nuclear Free Humboldt County Ordinance Compliance.** Consultant certifies by executing this Agreement that Consultant is not a Nuclear Weapons Contractor, in that Consultant is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. Consultant agrees to notify County immediately if it becomes a Nuclear Weapons Contractor, as defined above. County may immediately terminate this Agreement if it determines that the foregoing certification is false or if Consultant becomes a Nuclear Weapons Contractor.
- 18 Governing Law and Venue.** This Agreement shall be deemed to have been executed in the County of Humboldt where the Project is located. Enforcement of this Agreement shall be governed by the laws of the State where the Project is located, excluding its conflict of laws rules. Any action or dispute arising out of this Agreement shall only be brought in the County of Humboldt. Should any clause, provision or aspect of this Agreement be determined at any time to be unenforceable or in contravention of law, then the remaining clauses and provisions of this Agreement shall be enforceable to the fullest extent permitted by law and construed to give effect to fullest extent possible the intent of this Agreement. In the event of litigation, the terms of this Agreement shall be enforced first, and only when an answer to a dispute is not found in the terms of the Agreement, then by reference to State law.
- 19 Third Party Beneficiaries.** Consultant's sub consultants shall agree to be bound to the terms of the Agreement to the extent of their scope of services, including but not limited to, terms regarding indemnity, arbitration and dispute resolution. Nothing in this Agreement, however, shall operate to confer such or similar rights or benefits on any other persons or entities not party to this Agreement.
- 20 Statutes of Limitation.** As between the parties to this Agreement, any applicable statute of limitations for any act or failure to act shall commence to run on the date of County's issuance of the final Certificate for Payment, or termination of this Agreement, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.
- 21 Severability.** Any provision or portion thereof of this Agreement prohibited by, or made unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms to the greatest extent permitted by applicable law.
- 22 Agreement Shall Bind Successors and Survivors.** The terms of this Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties. In the case of the death of one or more members of the firm of CONSULTANT, the surviving member, or members shall complete the CONSULTANT services covered by this Agreement.
- 23 Assignment.** Neither party shall assign or transfer its obligation under this Agreement without the prior written consent of the other.

- 24 Survival of Provisions.** Except as otherwise separately and expressly provided by the County in writing, the provisions of this Agreement shall survive any expiration, breach, or termination of this Agreement, and any completion of the Services.
- 25 Headings.** The headings in this Agreement are for convenience only and do not affect the construction of this Agreement.
- 26 Modifications.** Modifications to these *Terms and Conditions* shall not be effective unless approved by the County Board of Supervisors and initialed by County Counsel.
- 27 Complementary Construction.** This Agreement and its Appendices are deemed complementary; what is called for by one is as binding as if called for in both and shall be performed by Consultant. In the case of direct conflict, then the requirement providing County with the broader scope of services shall have precedence. Consultant-Supplied Materials may only supplement Appendices B through E, but may not modify or supplement Appendix A.
- 28 Time.** Time is of the essence in the performance of this Agreement.

**END OF APPENDIX A**

## APPENDIX B: SCOPE OF SERVICES

This is an appendix attached to, and made a part of, the Professional Services Agreement (“**Agreement**”) between the County and Consultant, for the provision of professional services (“**Services**”).

### **1 General Requirements**

1.1 **Application.** The General Requirements stated herein in Appendix B, Section 1, shall apply to any provision of Services under this Agreement, whether Services encompass the entirety of this Appendix B, individual Tasks, or increments of service authorized per Work Authorizations.

1.2 **Scope of Services.** Unless specifically excluded from this Agreement, Consultant shall provide to County all professional architectural and engineering services necessary to perform the Services and to complete the Project. Services will include, but are not limited to, providing any and all necessary professional architectural and engineering services, including but not limited to, all architectural services and all civil, electrical, fire protection, mechanical, and structural engineering, landscape, and cost estimating services required to perform the Services.

### **1.3 General Criteria Governing Consultant’s Service.**

1.3.1 The Project shall be developed and designed to meet all applicable and the most current codes, laws, regulations, and professional standards, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the execution date hereof.

1.3.2 Unless otherwise permitted in writing by County, Consultant shall not propose or recommend any design that has the effect of shifting design responsibilities from Consultant to a Contractor through performance specifications or any other means. County will not, however, unreasonably withhold consent to the use of performance specifications that reflect accepted industry practice and which Consultant identifies in its proposal.

1.3.3 Consultant’s design shall provide that all surfaces, fixtures and equipment are readily accessible for maintenance, repair or replacement by ladders, power lifts, cat walks, and the like without exceeding the design loads of the floors, roofs, ceilings, and that such access is in conformance with Cal OSHA requirements.

### **1.4 Coordination.**

1.4.1 Consultant shall fully coordinate all architectural and engineering disciplines and subconsultants involved in completing its Services. Consultant shall participate in design coordination meetings with its subconsultants and, in addition, with any County prime consultants on other projects contiguous or related to the Project, for coordination of design. County shall have the right, but not the obligation, to set the dates of such meetings, to attend and participate in such meetings, and to remain fully advised and informed of the coordination of design work and the performance of each Consultant and subconsultant of their design responsibilities. Such meetings shall occur at least monthly, or more frequently as necessary.

1.4.2 Consultant shall continuously coordinate with County regarding all required points of County and Consultant/third party interface, for example, approvals, reviews, design input and supplying information. In all phases of the Services, Consultant shall work cooperatively with County, Contractor, and any of County’s other consultants with the

objective of delivering the Project within schedule, within the initial estimated construction budget, and Consultant's accepted estimates, and with the required level of quality. This duty will include, but not be limited to, furnishing complete and timely responses to reasonable requests for information, providing reasonable advance notice of meetings, providing decisions within a reasonable time, sharing non-proprietary information with other Project participants, communicating through designated representatives of other Project participants, and fulfilling Consultant's commitments made to other Project participants during the course of work. Consultant shall, further, coordinate with Contractor and County in developing and recommending a schedule for purchase of all materials and equipment requiring long lead time procurement, and coordinating the schedule with the preparation of Contract Documents.

1.5 **Deliverables Required Under This Agreement.** Required Deliverables for each Task are identified herein as written deliverables. Required deliverables under these General Requirements (applicable to all Services) are set forth below. Each deliverable shall be reviewed with representatives of County. Consultant shall promptly correct deficiencies in deliverables and shall promptly make modifications to conform with Project requirements and modifications to achieve acceptability of deliverables to County, and the cost thereof included in the fee for Basic Services.

1.6 **General Requirements Written Deliverables.**

1.6.1 Performance Schedule (written deliverable). Consultant shall prepare and maintain a Performance Schedule detailing the Consultant's scheduled performance of the Services, in the manner and to the detail requested by County. The Performance Schedule shall include: (a) the activities and milestones identified in County's Milestone Schedule, (b) the interrelationships of the Project Team, Consultant and Subconsultants, (c) the durations for the identifiable phases of their work, and (d) the projected dates for intermediate delivery for the County's progress reviews of Schematic Design, Design Development and Construction Documents, and critical activities related to bidding and permitting. Consultant shall update the schedule every other month or as reasonably requested by County, and shall not make any adjustments to the Performance Schedule without the County's prior written approval.

1.6.2 Monthly Progress Report (written deliverable). Consultant shall provide County with a Monthly Progress Report, in writing, reporting on Consultant's progress and any problems in performing the Services of which Consultant becomes aware. The Monthly Progress Report may be submitted with the monthly payment application and shall include, but not be limited to: (i.) a narrative of the work performed (including a list of any contract deliverables) and identification of areas of concern, actions and approvals needed, (ii.) a schedule assessment and proposed ways to work around any problems that arise, (iii.) monthly schedule status reports clearly identifying actual performance with respect to the current approved version of the schedule, and (iv) a sixty day look-a-head task listing of all anticipated specific requirements for information, decisions or documents from County necessary for Consultant's performance of its Services, and required third party approvals and preliminary meetings required to obtain agreement in principle with agencies and third parties involved in the Project.

1.7 **Progress.** Consultant shall complete all Services required by this Agreement within the times specified in the approved Performance Schedule, except where (i.) an event outside of Consultant's control causes a delay and (ii.) Consultant promptly advises County of such delay (such prompt notice to occur no more than 15 days after the first occurrence of the delay). Such events shall be limited to: acts of neglect by County or County's agents or by Consultants when acting at County's direction; breaches of this Agreement by County; Acts of God such as fire, flood, earthquake, or epidemic; delay by a construction contractor during the construction phase of the Project; or any other circumstances beyond Consultant's control. Should the progress of

the Services under this Agreement at any time fall behind schedule for any reason other than excusable delays, Consultant shall apply such additional manpower and resources as necessary to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of the essence in the performance of this Agreement.

- 1.8 **Consultant Supplied Materials.** Where Consultant has prepared and/or supplied County with a proposed scope of work that the parties have included in the Agreement by a specific reference, such scope of work and this Appendix B are deemed complementary; what is called for by one is as binding as if called for in both and shall be performed by Consultant. In the case of direct conflict, then the requirement providing County with the broader scope of services shall have precedence, except that such Consultant supplied document may not change, supplement or modify commercial terms or other items addressed in different appendices to this Agreement.
- 1.9 **Obligation of the County.** COUNTY agrees to do the following:
- 1.9.1 Provide background data as needed for work, including work files as applicable to this project.
  - 1.9.2 Provide the right of entry for consultant and sub consultant personnel to the site and the existing facilities.
  - 1.9.3 County is responsible for all things necessary to be done in conjunction with any required advertisement for bids, receipt of bids, and award of contracts.
  - 1.9.4 Provide to consultant a copy of all as-built drawings that are available that relate to the proposed work.
  - 1.9.5 Provide consultant with legal descriptions, maps and plats regarding project site for dedicated right of way or other easement, if needed.
  - 1.9.6 Provide consultant all assessment and documentation as required under the California Environmental Quality Act (CEQA) and local, state and federal guidelines.
  - 1.9.7 Provide consultant Title Report will be available for our use, if necessary.
  - 1.9.8 Provide consultant Division 0 (General Conditions) of the specifications.
  - 1.9.9 Assist consultant obtain a flow test report at the nearest fire hydrant from the City of Eureka.
  - 1.9.10 County is responsible for costs associated with potholing, equipment rental, compaction and materials testing.
  - 1.9.11 County is responsible for all fees, including but not limited to bonds, utility charges, public agency fees, title company fees, permit fees, testing and inspection fees.
  - 1.9.12 Provide consultant with site topographic and existing utilities survey.
  - 1.9.13 Provide consultant with report indicating all hazardous material found on existing site and within adjacent buildings.
  - 1.9.14 Provide consultant with Geotechnical Investigation report specific for the proposed project.

**2 TASK #1: PRE-DESIGN AND PROGRAMMING**

2.1 Task #1 was performed under a separate contract.

2.2 Consultants shall review and validate Task #1 documentation prepared by DLR. Provide report indicating any required changes to this information.

**3 TASK #2: SITE DEVELOPMENT PLANNING**

3.1 Consultant shall review and validate concept plans prepared by DLR. Provide report or revised concept site plans after review of diagrams with County.

**4 TASK #3: SCHEMATIC DESIGN PHASE**

4.1 For task #3, Schematic Design Phase, consultant shall provide the following written deliverables ten (10) copies each:

4.2 Schematic Design Phase Documents.

4.2.1 Schematic Design Phase Documents: Documents shall consist of plans and reports containing conceptual layouts, sketches and schematic design criteria with appropriate exhibits, sufficient to present the complete concept of the Project, including all major elements of the building(s), system(s), machinery, equipment, structure(s), and site design(s), proposed for construction which complies with the current program and cost limitations. By way of example, documents in this phase shall include, but are not limited to, the following (where applicable):

*Plan list*

*Site plan(s)*

*Schedule of building system types, equipment, machinery, systems,*

*Building sections and elevations*

*Outline specifications including architectural, structural, mechanical, electrical, and instrumentation systems and materials proposed*

*Schematic level construction cost estimates, reflecting the anticipated value of the low, responsive, responsible bid for construction of the Project*

*Project-specific analysis of codes, ordinances and regulations*

*Building layout plans*

*Initial construction phasing recommendations*

4.2.2 Reports, plans and exhibits shall incorporate County's program requirements and shall include structural concepts, site utilization plans, floor plans, elevations, sections, study perspectives and other plans necessary to describe the Project.

4.2.3 Consultant shall develop Schematic Design Phase reports, plans and exhibits until County has approved an acceptable design concept. Consultant shall participate in progress meetings with County representatives at County's request, up to twice monthly.

4.2.4 Schematic Design Phase reports and exhibits shall indicate clearly the considerations involved, including but not limited to applicable requirements of governmental authorities having jurisdiction or private licensing, patent, easements, or other legal restrictions, as well as an exposition of how the design reflects the County's program objectives. Reports and exhibits shall indicate any alternative solutions available to County and set forth Consultant's findings and recommendations.

4.3 Design Basis Report. Consultant shall provide a narrative report by each design discipline describing its proposed design philosophy with a description of, and the rationale for the proposed structural systems, mechanical systems, electrical, electronics and security systems,



types of equipment, materials and finishes, and site development and landscaping as required by the Project. The rationale shall include initial costs, lifecycle costs, and life expectancy and maintenance considerations.

- 4.4 Schematic Level Cost Estimate: Schematic level estimate of the Project's anticipated construction cost, accompanied with analysis and justification for each element of the estimate.

## **5 TASK# 4: DESIGN DEVELOPMENT PHASE**

- 5.1 For Task #4, Design Development Phase, Consultant shall provide the following written deliverables described below, ten (10) copies each:

- 5.2 Final Design Criteria. Consultant shall prepare final design criteria. Consultant shall participate in progress meetings with County representatives and any involved subconsultants, at County's request, up to twice monthly, to review and secure County's written acceptance of final design criteria.

- 5.3 Design Development Documents. Consultant shall prepare and submit to County design development documents. Consultant shall revise these documents consistent with the requirements and criteria established by County. These documents shall include the following:

- 5.3.1 Plans (architectural, civil, electrical, mechanical and structural) sufficient to fix and illustrate project's scope and character in all essential design elements, including but not limited to, site plans, architectural, structural, mechanical, electrical and plumbing floor and equipment connection plans, elevations; cross sections and other mutually agreed upon plans deemed necessary to describe the developed design; single line electrical and mechanical plans, and structural plans with Schematic sizing of major structural elements.

- 5.3.2 Revised Drawing list.

- 5.3.3 A tabulation of both gross and assignable floor, pavement and/or yard areas in a comparison to the approved conceptual program area requirements and to the initial program area requirements.

- 5.3.4 As appropriate, Consultant shall provide to County for its approval a color and materials board, samples of textures and finishes of all materials proposed in the Work.

- 5.3.5 Recommendations for scheduling and phasing of construction.

- 5.3.6 Outline specifications for each technical specification section, following the most current Construction Specification Institute conventions, with Part 2 Products of each section completed, describing the size, character and quality of the entire Project in its essentials as to kinds and locations of materials; equipment selections; and types of structural, mechanical and electrical systems. For major equipment and system specifications, Consultant shall also submit first cost and lifecycle cost analysis, with comparative analysis for the selected equipment/system item and two other alternative equipment/system items considered by Consultant but not selected.

- 5.3.7 Schematic engineering calculations for all disciplines, including realistic loads, and sufficiently complete for work on Construction Documents to proceed. Prepare for approval by County updated written design criteria for mechanical, electrical and plumbing systems (for example, temperature, humidity, lighting levels and floor live load design shall be stated for general and special occupancy areas).

- 5.4 Design Development level estimate of the Project's anticipated construction cost, accompanied with analysis and justification for each element of the estimate.

**6 TASK #5: CONSTRUCTION DOCUMENTS PHASE**

- 6.1 Construction Document Phase. After receipt of County's written approval of Design Development documents, the Consultant shall prepare Construction Documents, consisting of the following written deliverables:

- 6.2 Final Plans and Specifications. On the basis of the accepted Design Development documents and the updated cost estimates, schedule for completion and phasing of the Project, Consultant shall prepare for incorporation in the Contract Documents final plans ("Plans") and Specifications to show in detail all of the labor, materials, equipment and/or work to be furnished and performed by Contractor. Consultant shall make a progress submittal as required by County's design review process as directed, and shall modify the plans and specifications in accord with County's final review comments, if any. Plans and Specifications shall set forth in detail the requirement for construction of all work to be performed or furnished by Contractor.

6.2.1 Consultant shall deliver to County five (5) complete sets of final 100% Plans and Specifications.

6.2.2 Consultant shall deliver to Contractor at the issuance of the construction Notice To Proceed, twenty (20) complete sets of final 100% Plans and Specifications.

6.2.3 Consultant shall deliver all addenda, updates and other modifications as necessary to maintain all distributed final 100% Plans and Specifications through the construction Notice to Proceed.

- 6.3 Where plans and specifications are submitted to regulatory agencies and/or other authorities with jurisdiction, then the same architectural and engineering team (and team personnel) that prepared the submittal shall complete the plans and specifications. If the submittal is incomplete in any manner, then Consultant shall continue working on plans and specifications after the submittal in order to complete it, including completing all Subconsultant services, fully coordinating the plans, and doing a quality control review. All plans shall be brought to ninety-five percent level of completion at either the submittal, or shortly thereafter, and then coordinated and checked. The purpose of this subsection is to require Consultant to finish the design, so far as practical, either at the time of the submittal or shortly thereafter, to retain continuity in the design team and their familiarity with the Project. For good cause, Consultant may request relief from this paragraph. County may, but is not required to, conduct a peer review on the completed plans.

- 6.4 Format of Technical Specifications. Consultant shall prepare final technical specifications in conformance with the most current conventions of the Construction Specification Institute. Consultant shall cooperate with County in coordinating the Plans and technical specifications with County's Divisions 0 standard specifications. Consultant shall provide work descriptions for inclusion into County's standard specifications and shall provide whatever Division 1 construction contract specifications are necessary for the Project and not supplied in County's standard specifications.

- 6.5 AutoCAD and Other Electronic Data. Provide AutoCAD Version 2007 and Revit files of all Plans including as-bid, as-built, and all record Plans, in electronic formats as requested by County. Prepare electronic record sets and sets of reproducible record prints or Plans showing those changes made during the construction process, based on the marked-up prints, marked-up Technical Specifications, Plans and other data furnished by Contractor to County and then to Consultant. Electronic data shall be generated in AutoCAD Version 2007 or Softdesk Release 8 and Revit and shall conform to County standards package (to be supplied).

- 6.6 Compliance with Codes, Regulations and Requirements. All Plans, Specifications, structural design calculations, site data, and cost estimates required by State or Federal law shall comply with State and federal standards. Consultant shall comply with any other requirements of authorities with jurisdiction over the Project or the Plans and Specifications. Consultant shall comply with the applicable standard of care when preparing Plans and Specifications to comply with applicable building codes, ordinances, statutes, laws, standards, governmental regulations and private restrictions, applicable to the Services, including, but not limited to, those listed in this Agreement, all environmental, energy conservation, and disabled access requirements, regulations and standards of the Fire Marshal or other authorities having jurisdiction over the Project.
- 6.7 Supply of Design Calculations. Consultant shall provide County with copies of all final electrical, mechanical and structural design calculations, organized by specification. Consultant shall provide County with a final update on the final design criteria utilized.
- 6.8 Quality Levels and Quality Control Procedures. The Plans and Specifications must clearly identify and describe all necessary quality levels and quality control procedures such as inspections, tests, submittals or other measures that the Contractor must satisfy, meet or perform. Each specification section must include the requirements for the tests, controls, performances and certifications needed to verify the specified quality level of that section. Each work-related specification section must also dedicate a subsection to identify and list required Contractor submittals along with testing and inspection requirements. Consultant shall provide County with a separate listing of tests, inspections and reports required under the construction plans and specifications prepared by Consultant, and responsibility therefore, to occur in connection with the Project.
- 6.9 Phasing Recommendations. Consultant shall provide, at 50% completion of this phase, a construction-phasing schedule for the construction work, which will minimize disruption to County tenants and adjacent construction projects, if any.
- 6.10 County's Progress Design Review. Consultant shall submit to County for County's review and comment the Construction Documents (Plans and Specifications) developed in this Phase per County's design review requirements, and again at 95% completion. Consultant shall allow County time to review its Construction Documents deliverables in accordance with *Appendix E: Project Completion and Review Schedule*. Consultant shall respond to County comments and incorporate those comments as necessary.
- 6.11 Estimate of Construction Cost. Based on the information contained in the Plans and Specifications, Consultant shall submit, at 95% completion of this Phase, a revised opinion and detailed estimate of Project construction costs, with phasing and scheduling recommendations, coordinated with the Schedule. The estimate shall reflect the anticipated value of the low, responsible responsive bid on the construction contract for the project. If the cost estimate based on the final Plans and Specifications exceeds the project budget as herein defined, the Consultant shall recommend revisions to said Plans and specifications that will reduce costs to the budget amount and upon approval of County, shall make such revisions.

## **7 TASK #6: BIDDING AND AWARD PHASE**

- 7.1 After receipt of County's written authorization to proceed with the Bidding phase, Consultant shall assist County in administering the bidding and award of the construction contract. This shall include:
- 7.1.1 Attend the pre-bid conference and other special meetings as requested by County.
- 7.1.2 Respond to inquiries pertaining to the Plans and Specifications.

- 7.1.3 Consult with County concerning, and determine the acceptability of, substitute materials and equipment proposed by bidders.
  - 7.1.4 Prepare written addenda as appropriate to interpret, clarify or expand the bidding documents, including allowable substitutions of materials and equipment, as requested by County or to respond to bidder requests.
  - 7.1.5 Provide assistance to County in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services, as requested by County.
- 7.2 Where Bids Exceed Budget: If the lowest responsible, responsive bid received from a Contractor exceeds the latest accepted estimate of construction costs, County may, at their discretion:
- 7.2.1 Award the contract to the lowest responsible, responsive bidder, and give written approval of an increase in County's budget.
  - 7.2.2 Reject all bids and rebid the contract.
  - 7.2.3 If the bid amount is more than five 5% greater than the Consultant's latest accepted estimate of construction cost rendered during the Construction Documents Phase, County may require Consultant to revise the scope of work to be performed by the Contractor or its quality, or both, so as to reduce the Project's estimated construction cost for the work to be performed by the Contractor, while still meeting County's Project objectives. Consultant shall at its expense, if so directed by County, modify the Construction Documents in order to reduce the Project's estimated construction costs for the work to be performed by the Contractor within the Project budget for that Contractor's work.
  - 7.2.4 Abandon the Project and terminate this Agreement.

## **8 TASK #7: CONSTRUCTION PHASE**

- 8.1 After execution of the construction contract between County and Contractor, the Consultant shall endeavor to protect County against defects and deficiencies in the execution and performance of the work, and shall perform the services below for the benefit of County.
- 8.2 The Consultant shall attend regularly-scheduled construction progress meetings to be held at the construction site on a bi-weekly schedule until construction is complete.
- 8.3 The Consultant shall review and approve Contractor's shop plans, test reports, substitution requests and other submittals for conformance to the requirements of the Contract Documents.
- 8.4 The Consultant shall periodically visit the site to monitor the quality and progress of the work and as a written deliverable, furnish a written field report that documents each. This service shall be limited to a period amounting to 110% of the construction period as originally established under
- 8.5 the construction contract unless construction has been delayed due to Consultant's failure to properly perform its duties and responsibilities. County may direct additional work monitoring as additional services. Consultant shall advise County in writing of any observations of defective work, work not in conformance with plans and specifications, and lack of progress of work.
- 8.6 Consultant shall as a written deliverable, establish and maintain to the satisfaction of County, a computer database (compatible with the database maintained by County) that shall contain complete and accurate records regarding defective work, work not in conformance with plans and specifications, and lack of progress of work, and shall cross reference such work to the plans and

specification sections violated. Consultant shall make such database available to County at all reasonable times and turn over the database to County upon completion or termination of this Agreement.

- 8.7 Consultant shall assist in issuing necessary interpretations, clarifications and replying to other information requests regarding the Contract Documents and in connection therewith assist County with supplemental instructions and change orders as required, with reasonable promptness so as to cause no delay to Contractor or the Project. In no event shall Consultant's response time be longer than the associated time periods established by the Contract Documents.
- 8.8 Consultant shall maintain to the satisfaction of County a computer based system compatible with County's system to record, control and manage the review of submittals and various other construction directives, which shows the interrelationships among and between such documents and requests for changes or claims, and which can be used for coordination of submittal reviews with the Project scheduling requirements, and shall make such system available to County at all reasonable times. (Electronic deliverable.)
- 8.9 The Consultant shall require any subconsultant to provide the Services listed in this section where and as applicable and to visit the Project during the time that construction is occurring on the portion of the work related to its discipline and report in writing to the Consultant.
- 8.10 Based on Consultant's on-site observations as an experienced and qualified Consultant, Consultant shall review contractor's monthly applications for payment and accompanying data and schedules, and shall assist County in its determination of amounts owing to Contractor and recommend, in writing, payments to Contractor in such amounts. Recommendations of payment by Consultant will constitute a representation to County that the work has progressed to the point indicated, and that to the best of Consultant's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation).
- 8.11 Consultant shall receive and review all certificates of inspections, testing and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).
- 8.12 Consultant shall inspect work to determine if work or portions of work are substantially complete, and for development of punchlists, and final completion. Consultant shall document its findings in writing. The Consultant shall prepare a written punchlist, and other necessary construction closeout documents. Such work, whenever performed, shall constitute Basic Services.
- 8.13 The Consultant shall prepare a set of reproducible record prints of Plans, showing "as built" conditions, showing significant changes in the work made during construction, including the locations of utilities, based on marked up prints, plans and other data furnished by the Contractor to County. Consultant shall prepare electronic record sets and sets of reproducible record prints or Plans showing those changes made during the construction process, based on the marked-up prints, marked-up Technical Specifications, Plans and other data furnished by Contractor to County and then to Consultant. Electronic data shall be generated and supplied in the same format (e.g., Auto CAD) as original construction documents.
- 8.14 Written deliverables in the construction phase shall include, but are not limited to necessary notices, communications, interpretations, clarifications, as required herein, including without limitation:

- 8.14.1 Actions as appropriate on instructions to contractor, information requests, submittals and payment recommendations.
- 8.14.2 Actions as appropriate on changes to the Contract Documents.
- 8.14.3 Certificates of Substantial Completion and Final Completion.
- 8.14.4 Punchlists.
- 8.14.5 Electronic record sets and sets of reproducible record prints of Plans showing changes made during construction.
- 8.14.6 Electronic record sets and sets of prints of Technical Specifications showing changes made during construction.

**9 TASK #8: OPERATION/PROJECT CLOSE-OUT PHASE**

- 9.1 Operation/Close Out. During the Operation/Project Close-Out Phase, Consultant shall, when requested by County:
  - 9.1.1 Provide assistance in connection with the refining, adjusting and correcting of any equipment or systems.
  - 9.1.2 Assist in start-up, testing and placing in operation special equipment and systems. (For all such equipment and systems, Consultant shall have specified start-up and testing procedures in the Design Documents.)
  - 9.1.3 Provide assistance in connection with completion of punchlist work, including but not limited to, preparing the initial comprehensive punchlist and conducting no more than two follow up site visits (with follow up punchlisting if necessary) in addition to other responsibilities under this Agreement.
  - 9.1.4 Assist County in coordination of training County's staff to operate and maintain equipment and systems as necessary.
  - 9.1.5 Assist County in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.
  - 9.1.6 Together with County, visit the Project to observe any apparent defects in the completed construction, assist County in consultations and discussions with Contractor concerning correction of such deficiencies, and make recommendations as to replacement, correction, or diminished value of defective work.
  - 9.1.7 Together with County, coordinate, prepare and submit all final required deliverables under Title 24 and any thing else required by ANY GOVERNING REGULATORY AGENCY for its final Project approval.
  - 9.1.8 Advise and assist County in construction matters for a period up to 18 months following completion of the project, but such assistance is not to exceed 40 hours of service and involve up to three trips to the Project.

**10 TASK #9: ADDITIONAL SERVICES**

All Services identified in the Agreement, including but not limited to the Agreement form, the other appendices, and in the foregoing sections of this Appendix B are ("Basic Services"). County may request Consultant to provide services in addition to Basic Services, referred to hereafter as

("Additional Services"). Additional Services must be authorized by County in writing prior to performance. Consultant shall be compensated for Additional Services as provided herein, unless the parties agree on lump sum compensation for particular work activities.

10.1 Compensation for Additional Services. Consultant shall be compensated for Additional Services as set forth in Appendix C.

10.2 Services. The following services shall be considered Additional Services:

10.2.1 Making revisions in reports, Plans, or other documents, if:

10.2.1.1 Such revisions are not necessary because of a deficiency in Consultant's Services; and

10.2.1.2 Such revisions are inconsistent with written approvals or instructions previously given by County, or are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or are due to other causes not solely within the control of Consultant.

10.2.2 Changes in scope, such as revisions of approved reports or Design Documents. Changes in schedule can be a change in scope only if Consultant has fully performed its scheduling and coordination responsibilities herein required and the changes in schedule are in addition to these responsibilities.

10.2.3 Design or selection efforts for moveable furniture or equipment beyond the extent required by other provisions of this Agreement.

10.2.4 Designs for utility and service relocations.

10.2.5 Design of a Fire Sprinkler System, if required by the State Fire Marshal. As a basic service consultant will provide performance specifications and will review the shop drawing submittal.

10.2.6 Required out-of town travel beyond limits specified in Appendix C.

10.2.7 Property surveys or field surveys for design purposes, engineering surveys, and staking, if and to the extent not required by other provisions of this Agreement.

10.2.8 Preparing to serve or serving on behalf of County as an expert witness (but not as a percipient witness) in connection with any arbitration, administrative or other proceeding or legal proceeding.

10.2.9 Services to verify independently the accuracy of geotechnical information, if and to the extent not required by other provisions of this Agreement.

10.2.10 Assisting in actual claims resolution efforts when such claims arise from matters unrelated to Consultant's performance.

10.2.11 Providing construction phase Services beyond the contract period, but only to the extent the additional duration increases Consultant's Scope of Services (for example, Punchlist and Close Out Services, whenever performed, shall be Basic Services.)

10.2.12 Additional Services shall not include work or services necessary because of Consultant's errors, omissions or conflicts of any type in Consultants' Plans and Specifications prepared. All such services shall be performed at no cost to County, including, but not

limited to, any required corrections or revisions to reports, plans or specifications that are a result of any errors or omissions by Consultant. Nor shall Additional Services include work performed prior to written notice and written agreement upon the Additional Services.

- 10.2.13 Extra costs resulting from excusable delay provided consultant shows that the costs claimed (i) resulted from time and/or expenses actually incurred in performing Services, (ii) were incurred by Consultant as a direct result of the delay and not otherwise within Consultant's scope of Services, and (iii) are documented to County's satisfaction. (For example, and not by way of limitation, contract punchlist and final inspection Services, whenever performed, and Services related to correcting deficiencies in Consultant's work, shall be within Basic Services and not entitle Consultant to Additional Services.)

**END OF APPENDIX B**



## APPENDIX C: COMPENSATION

This is an appendix attached to, and made a part of, the Professional Services Agreement (“**Agreement**”) between County and Consultant, for the provision of professional services (“**Services**”).

### **1 Where the Agreement Form Identifies the Basis of Compensation as a Fixed Fee**

- 1.1 Excluding Additional Services only, the fixed fee identified in the Agreement shall be full compensation for all Services required, performed or accepted under this Agreement, and shall include without limitation, costs for Expenses as identified below necessary to perform the Services.
- 1.2 Progress payments for Services shall be made monthly based upon Consultant’s percentage completion of the Services as determined by County, unless County and Consultant expressly agree otherwise.

### **2 Payment Procedures / Work Breakdown Structure**

- 2.1 The Work will be performed by task with the maximum compensation assigned to each task for Architectural/Engineering Services as follows:

2.1.1 Task #1: Program Verification:

Completion of Task #1 \$ 12,000  
Expenses: Included in Basic Services

2.1.2 Task #2: Site Concepts, Verification:

Completion of Task #2 \$ 16,450  
Expenses: Included in Basic Services

2.1.3 Task #3: Schematic Design Phase:

Completion of Task #3 \$ 291,448  
Expenses: Included in Basic Services

2.1.4 Task #4: Design Development Phase:

Completion of Task #4 \$ 240,000  
Expenses: Included in Basic Services

2.1.5 Task #5: Construction Documents Phase:

Completion of Task #5 \$ 420,000  
Expenses: Included in Basic Services

2.1.6 Task #6: Bidding and Award Phase:

Completion of Task #6 \$ 30,000  
Expenses: Included in Basic Services

2.1.7 Task #7: Construction Phase:

Completion of Task #7 \$ 240,000  
Expenses: Included in Basic Services

2.1.8 Task #8: Operation/Project Close-Out Phase:

Completion of Task #8 \$ 15,000  
Expenses: Included in Basic Services

2.2 Basic Services Fee Defined. The total fee for all Basic Services is calculated as follows:

2.2.1 Architectural Services Fee:

Architectural  
Structural  
Mechanical, Electrical, Plumbing  
Cost Estimating  
Civil Engineering  
Landscape Architecture  
Security Electronics  
Foodservice

2.2.2 Architectural Services Fee Total: \$1,264,898

2.2.3 Enhanced Services Fee:

2.2.4 Maximum Enhanced Services Fee Total: \$ 0

2.2.5 Maximum Services Fee Total: \$1,264,898

2.2.6 Expenses: Included in Basic Services

2.3 All billings and requests for progress payments shall require a written invoice from Consultant in a form acceptable to County. County shall make payment on approved amounts within each invoice within 30 days of receipt.

2.4 Expenses. Consultant's expenses are included in the compensation for Basic Services, and include actual out of pocket expenditures made by Consultant and subconsultants on behalf of County in the interest of PROJECT. No additional compensation shall be due for Consultant's expenses.

2.5 Consultant shall submit all billings with all necessary invoices, deliverables, or other appropriate evidence of performance, after which County shall make payment at the earliest practicable time.

2.6 Additional Services. County will pay the Consultant for Additional Services as agreed to in a written addendum or amendment ("amendment") to this Agreement executed by County and the Consultant. Payment for all such Additional Services shall be as follows:

2.6.1 General. For Additional Services of Consultant's professional staff engaged directly on the Project, on the basis of a lump sum negotiated between the parties, or, at County's option, at Consultant's Billing Rates plus Reimbursable Expenses Related to Additional Services up to a guaranteed maximum price (GMP).

2.6.2 Subconsultants. For Additional Services of subconsultants employed by Consultant to render Additional Services, the amount billed to Consultant therefore times [1.05] for general and administrative expenses. For Additional Services billed on an hourly basis, Consultant agrees that all subconsultant billing will be limited to a not-to-exceed amount upon prior written approval of County.

2.6.3 Amendments must be negotiated and signed by the Consultant and County prior to commencing work of Additional Services; otherwise, such costs are deemed within Basic Services.

## 2.7 Definitions

2.7.1 "Additional Services" mean services beyond the scope of the Services defined in this Agreement, identified as Additional Services in Appendix B Scope of Services.

2.7.2 "Billing Rates" shall be the hourly rates indicated on *Exhibit 1 to Appendix C: Compensation*. Where exact Billing Rates are not agreed upon and a multiplier method is used, then Billing Rates shall be calculated on the basis of "Actual Salary" (raw salary excluding all other salary related and/or fringe benefit costs of any type, nature or description), times the agreed multiplier. (Such multiplier shall include overhead, general and administrative expenses, employee fringe benefits, profit, interest on invested capital, readiness to serve, and all other contingencies and other considerations for the work of this Agreement.)

2.7.3 "Reimbursable Expenses Related to Additional Services" shall be limited to the list of reimbursable expenses listed in *Exhibit 1 to Appendix C: Compensation* and the specific expenses identified below. All other expenses are not reimbursable and are deemed included in the Billing Rate.

2.7.3.1 Travel Costs. The reasonable expense of travel costs incurred by Consultant when requested by County to travel to a location more than 50 miles from either the Project site, the Consultant's office(s), or County's office, incurred performing Additional Services.

2.7.3.2 Long Distance Telephone Costs. Long distance telephone calls and long distance telecopier costs incurred performing Additional Services.

2.7.3.3 Delivery Costs. Courier services and overnight delivery costs incurred performing Additional Services.

2.7.3.4 Reproduction Costs. Reproduction and postage costs of required plans, specifications, bidding and other documents required under this Agreement, if any, incurred performing Additional Services.

2.7.3.5 Calculation. County shall pay Consultant the actual cost of all Reimbursable Expenses Related to Additional Services times [1.1] for general and administrative expenses, up to the guaranteed maximum reimbursable expense cost (GMREC).

**END OF APPENDIX C**

**EXHIBIT 1 TO APPENDIX C**  
**Hourly Rate & Reimbursable Rate Schedule**  
**(Effective January 1, 2012)**

Principal Architect .....	\$195.00/hour
Principal Structural Engineer .....	\$195.00/hour
Associate Principal Architect .....	\$165.00/hour
Associate Principal Engineer.....	\$165.00/hour
Senior Associate Architect .....	\$155.00/hour
Senior Associate Engineer.....	\$155.00/hour
Associate Architect .....	\$150.00/hour
Associate Engineer .....	\$150.00/hour
Structural Engineer .....	\$145.00/hour
Senior Project Engineer .....	\$130.00/hour
Project Architect .....	\$125.00/hour
Project Engineer.....	\$125.00/hour
Project Manager .....	\$125.00/hour
Architect.....	\$120.00/hour
Interior Designer .....	\$110.00/hour
Project Technician I .....	\$105.00/hour
Project Technician II .....	\$100.00/hour
Project Technician III.....	\$95.00/hour
Administrative Analyst .....	\$65.00/hour
Technical Assistant.....	\$60.00/hour
Administrative .....	\$50.00/hour

**REIMBURSABLE EXPENSE RATES:**

**REPROGRAPHICS**

In-House Prints (24"x36") .....	\$2.50/each
In-House Prints (24"x36") for Qty.> 100/per order .....	\$2.00/each
In-House Prints (30"x42") .....	\$3.50/each
In-House Prints (30"x42") for Qty.>100/per order.....	\$3.00/each
In-House Prints (12x24, 15x21, 18x24) .....	\$1.75/each
In-House Prints (12x24, 15x21, 18x24) for Qty.>100/per order .....	\$1.25/each
Prints (24"x36"/30"x42") printed by outside source (Available on Construction Sets ONLY).....	Actual Expense + 10%
Copies (8-1/2x11) .....	\$ .10/each
Copies (8-1/2x14) .....	\$ .15/each
Copies (11x17) .....	\$ .20/each
Color Copies (8-1/2x11) .....	\$ .50/each
Color Copies (11x17) .....	\$ .75/each

**TRAVEL EXPENSES**

Mileage.....Current IRS allowed amount

**COMPUTER EXPENSES**

Comp. Plots (24"x36" Bond- black and white) .....	\$4.00 per plot
½ size Plots .....	\$2.00 per plot
(30"x42" Bond- black and white) .....	\$5.00 per plot
½ size Plots .....	\$2.50 per plot
(11"x17"/8-1/2"x11" Bond- color).....	\$5.00 per plot
(24"x36" Bond- color) .....	\$20.00 per plot
(30"x42" Bond- color) .....	\$25.00 per plot
Electronic transfer of drawing files .....	\$50.00 per dwg
for other than NMR and sub-consultant use	

**CONSULTANTS**

Consultant Billings (for additional services) .....	Actual Expense + 10%
Consultant Reimbursable Expenses.....	Actual Expense + 10%

## APPENDIX D: CONSULTANT'S STAFFING PLAN

This is an appendix attached to, and made a part of, the Professional Services Agreement (“**Agreement**”) between the County and Consultant, for the provision of professional services (“**Services**”).

### 1 CONSULTANT'S STAFFING PLAN

Consultant's Staffing Plan (if supplied) is appended to as *Exhibit 1 Appendix D: Consultants Staffing Plan*, and identifies staff by position, name, responsibility, rate, planned level of effort, projected hours, and his or her planned periods of involvement with the Project, for both Consultant and for Consultant's subconsultants in direct contract with Consultant (“**Staffing Plan**”). Staffing in organization chart format, substantially conforming to County's organization chart, is also provided.

### 2 INITIAL KEY PERSONNEL

The Staffing Plan may identify Consultant's and subconsultant's initial **Key Personnel**, by their positions and names.

### 3 CHANGES TO KEY PERSONNEL AND ADDITIONS TO STAFFING PLAN

- 3.1 For Key Personnel, Consultant and subconsultants shall not remove, reassign or make changes to any of the Key Personnel or their assignment durations without County's prior written approval.
- 3.2 For personnel initially identified in the Staffing Plan by position only, Consultant shall submit for review, comment and approval, resumes of each person proposed to fill each position, and/or replacements to personnel once approved, showing such person's experience and qualifications to fill such position. Such added personnel (“Added Personnel”) shall be added to Consultant's staff necessary, but subject to approval by County.
- 3.3 Unless directed to reduce staff by County, in the event that any Key Personnel or Added Personnel, for any reason thereafter ceases to fill that position, within ten (10) days thereof, Consultant shall propose a replacement person for County's approval pursuant to the following process:
  - 3.3.1 Consultant shall prepare and submit to County for its review, comment and approval, a proposal listing all personnel that Consultant proposes to assign to the Project as replacement, and the proposed duration of each such assignment.
  - 3.3.2 Within fifteen (15) days following Consultant's submittal of the proposal and resumes, County shall either give its written approval of such submission or provide comments. In the event County approval is withheld, Consultant, in response to such comments, shall promptly, but no later than five (5) business days after receipt of County's comment, make all necessary and appropriate changes to the proposal (including changes in proposed staff) and resubmit it to County for its approval, and such process shall continue until County approves Consultant's proposed staffing. Such approvals shall not be unreasonably withheld.
  - 3.3.3 For replacement of Key Personnel, Consultant shall be subject to liquidated damages as described below, and also may not receive reimbursement for substitute personnel in amounts greater than would have been paid for the initial Key Personnel.
- 3.4 County may, in its sole discretion, direct Consultant to add to or reduce Consultant's staff to meet changing Project requirements.

**4 UNSATISFACTORY PERSONNEL**

- 4.1 Consultant shall remove any person employed by Consultant or any subconsultant (or cause the removal of any employee of a subconsultant of any tier) whom County may deem incompetent, improper or a hindrance to the progress of any Work or Services on the Project, and in the event of any such removal, Consultant shall immediately replace (or cause to be replaced) such person with a properly qualified and experienced replacement and, in the case of removal of any person holding any position described in the Staffing Plan, Consultant shall propose properly experienced and qualified replacement personnel for County approval, pursuant to the same process as is described in paragraph 3 above.

**5 LIQUIDATED DAMAGES FOR KEY PERSONNEL**

- 5.1 Consultant and County agree that the personal services of the Key Personnel is a material term of the Agreement, and substitution or removal or change in role or level of effort, of such Key Personnel would result in damages to the County, the measure of which would be impractical or extremely difficult to fix, and in lieu of which County and Consultant have agreed to liquidated damages as described below.
- 5.1.1 County may assess and Consultant shall accept liquidated damages in the amount of one (1) times the gross monthly salary for authorized substitutions of any Key Personnel.
- 5.1.2 County may assess and Consultant shall accept liquidated damages in the amount of three (3) times the gross monthly salary for unauthorized substitutions of any Key Personnel.
- 5.2 No liquidated damages shall be due under this paragraph if the substitution is required due to death, incapacity, resignation, or termination of Key Personnel.
- 5.3 County, in its sole discretion, may elect to waive, reduce or delay implementation of liquidated damages.

**END OF APPENDIX D**

**EXHIBIT 1 TO APPENDIX D: CONSULTANT'S STAFFING PLAN  
Supplemental List of Key Personnel and Staff Positions**

This is an Exhibit attached to, and made a part of, the Professional Services Agreement ("Agreement") between the County and Consultant, for the provision of professional services ("Services").

- 1 Consultant shall provide County with a list of key personnel and staff positions that identifies staff by position, name, responsibility, rate, planned level of effort, and his or her planned periods of involvement with the Project, for both Consultant and for Consultant's subconsultants in direct contract with Consultant.
  - 1.1 Consultant's Staffing Plan shall be provided in organization chart format, substantially conforming to County's organization chart.
- 2 Consultant shall commit active participation of the following consultants through Project completion.
  - Lionakis
  - NMR Structural
  - Whitchurch
  - Costa Engineers
  - Ken Rubitsky & Associates
  - Lander and Associates
  - PCI
  - Sierra West Group
  - The Marshall Associates, Inc.
  - Juvenile Facility Planning
  - Structural Engineering
  - Civil Engineering
  - Mechanical & Plumbing Engineer
  - Electrical Engineer
  - Landscape Architecture
  - Security Electronics
  - Cost Consulting
  - Foodservice Design
- 3 Consultant shall submit written notification to County prior to any actual changes in the Project consultants, and no changes shall be implemented except by express prior written authorization of County.

**END OF EXHIBIT 1 TO APPENDIX D**

## APPENDIX E: PROJECT COMPLETION AND REVIEW SCHEDULE

This is an appendix attached to, and made a part of, the Professional Services Agreement ("Agreement") between the County and Consultant, for the provision of professional services ("Services").

- 1 **Project Completion and Review Schedule.** Per Section 5 of the Agreement Form, the work shall be completed by Consultant and reviewed by County within the time frames identified as follows:

<u>Tasks</u>	<u>Time for Completion by Consultant</u>	<u>Time for Review by County</u>
1 <b>Task #1 &amp; Task #2:</b> Program and Site Concept Verification	20 Calendar days after County issues Consultant written Notice to Proceed based on Award of the Agreement.	14 Calendar days after County receives Consultant deliverables as described in Appendix B: Scope of Services.
2 <b>Task #3:</b> Schematic Design Phase	80 Calendar days after County issues Consultant written Notice to Proceed based on approval of the Task #2 Scope of Work.	14 Calendar days after County receives Consultant deliverables as described in Appendix B Scope of Services.
3 <b>Task #4:</b> Design Development Phase	90 Calendar days after County issues Consultant written Notice to Proceed based on approval of the Task #3 Scope of Work.	14 Calendar days after County receives Consultant deliverables as described in Appendix B Scope of Services.
4 <b>Task #5:</b> Construction Documents Phase	140 Calendar days after County issues Consultant written Notice to Proceed based on approval of the Task #4 Scope of Work.	21 Calendar days after County receives Consultant deliverables as described in Appendix B Scope of Services.
5 <b>Task #6:</b> Bidding and Award Phase	40 Calendar days after County issues Consultant written Notice to Proceed based on approval of the Task #5 Scope of Work. Timeframe is an estimate and is contingent on SPWB final approval date.	14 Calendar days after County receives public bids.
6 <b>Task #7:</b> Construction Phase	After County issues to Consultant written Notice to Proceed based on the successful Award of a construction contract between County and Contractor.  The projected construction time is anticipated to be no more than 550 Calendar days, depending on phasing.	N/A

**END OF APPENDIX E**



## APPENDIX F: INSURANCE REQUIREMENTS

This is an appendix attached to, and made a part of, the Professional Services Agreement (“**Agreement**”) between the County and Consultant, for the provision of professional services (“**Services**”).

- 1 Consultant’s Duty to Show Proof of Insurance.** Prior to the execution of this Agreement, Consultant shall furnish to County satisfactory proof that Consultant has taken out for the entire period required by this Agreement, as further described below, the following insurance, in a form satisfactory to County and with an insurance carrier satisfactory to County, authorized to do business in California and rated by A. M. Best & Company “A” or better, financial category size Seven (7) or better, which will protect those described below from claims described below which arise or are alleged to have arisen out of or result from the acts or omissions of Consultant for which Consultant may be legally liable, whether performed by Consultant, or by those employed directly or indirectly by it, or by anyone for whose acts Consultant may be liable:
  - 1.1 Commercial General Liability Insurance. Commercial general liability insurance, written on an “occurrence” basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, products liability, blasting, explosion, collapse of buildings or structures, damage to underground structures and utilities, liability for slander, false arrest and invasion of privacy arising out of construction management operations, blanket contractual liability, broad form endorsement, a construction management endorsement, products and completed operations, personal and advertising liability, with per location limits of not less than \$2,000,000 general aggregate and \$2,000,000 each occurrence, subject to a deductible of not more than \$25,000 payable by Consultant.
  - 1.2 Business Automobile Liability Insurance. Business automobile liability insurance with limits not less than \$1,000,000 each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than \$10,000 payable by Consultant.
  - 1.3 Workers’ Compensation Insurance. Workers’ Compensation Employers’ Liability limits not less than \$1,000,000 each accident, \$1,000,000 per disease and \$1,000,000 aggregate. Consultant’s Workers’ Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Consultant is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.
  - 1.4 Professional Liability Insurance. Professional Liability Insurance, either (a) specific to this Project only, with limits not less than \$2,000,000 each claim, or (b) limits of not less than \$2,000,000 each claim and aggregate, all with respect to negligent acts, errors or omissions in connection with services to be provided under this Agreement, and any deductible not to exceed \$25,000 for each claim, with no exclusion for claims of one insured against another insured and with tail coverage for a period of five (5) years after the completion of the Services.
  - 1.5 Environmental Impairment Insurance. If applicable, Environmental Impairment Liability Insurance appropriate for the hazardous materials/waste activity contemplated in this Agreement, with limits not less than \$1,000,000 per claim; and \$2,000,000 annual aggregate. The retroactive date (if any) is to be no later than the effective date of this Agreement.
  - 1.6 Insurance Notices

County of Humboldt  
Attn: Risk Management  
825 5" Street, Room 131  
Eureka, CA 95501

AND

Humboldt County Department of Public Works  
1106 Second Street  
Eureka, California, 95501

**2 Insurance policies shall contain an endorsement containing the following terms:**

- 2.1 Status of County as Additional Insured. On Consultant's Commercial General Liability policy and Automobile Liability Policy, County, and its affiliates, directors, officers, officials, partners, representatives, employees, consultants, subconsultants, agents, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured. Said policy shall also contain a provision stating that such coverage:
- a. Includes contractual liability.
  - b. Is primary insurance as regards to County.
  - c. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of building or structure to property underground, commonly referred to 'XCU Hazards'.
  - d. Does not contain a pro-rated excess only, and/or escape clause.
  - e. Contains a cross liability, severability of interest or separation of insured's clause.
- 2.2 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.
- 2.3 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to County thirty (30) days in advance of the effective date thereof.
- 2.4 Insurance shall be primary insurance and no other insurance or self insured retention carried or held by any named or additional insureds other than that amount Consultant shall be called upon to contribute to a loss covered by insurance for the named insured.
- 2.5 Certificates of Insurance and Endorsements shall have clearly typed thereon the title of the Agreement, shall clearly describe the coverage and shall contain a provision requiring the giving of written notice described above in subsection 2.3.
- 2.6 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant or any of its permitted subcontractors or subconsultants may be held responsible for payment of damages resulting from their operations.
- 2.7 If Consultant fails to maintain any required insurance, County may take out such insurance, and deduct and retain amount of premium from any sums due Consultant under this Agreement.

**END OF APPENDIX F**