



**RESOURCE MANAGEMENT
AGENCY
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One

PETE VANDER POEL
District Two

AMY SHUKLIAN
District Three

EDDIE VALERO
District Four

DENNIS TOWNSEND
District Five

AGENDA DATE: July 23, 2019

Public Hearing Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
CONTACT PERSON: Celeste Perez PHONE: (559) 624-7010		

SUBJECT: Agreement with Lower Tule River Irrigation District for Placement of Irrigation Pipeline on Avenue 176, Avenue 180, Road 136 and Road 148

REQUEST(S):
That the Board of Supervisors:

1. Approve an agreement with Lower Tule River Irrigation District (LTRID), in connection with an application for an encroachment permit to place an irrigation pipeline within County rights-of-way of Avenue 176, Avenue 180, Road 136 and Road 148, for the period of July 23, 2019 to July 23, 2044; and
2. Authorize the Chairman to sign the Agreement.

SUMMARY:
LTRID has submitted an encroachment permit application to the Resource Management Agency requesting permission to install 31,000 lineal feet of 15, 24 and 36-inch polyvinyl chloride irrigation pipeline within the County road rights-of-way of Avenue 176, Avenue 180, Road 136 and Road 148.

The County does not normally allow the placement of private utilities within the County road right of way. The attached indemnification agreement will allow LTRID to place the pipeline in County right of way and to indemnify the County. LTRID has exhausted other alternatives to place the pipeline outside of County right-of-way, due to the inability to obtain pipeline easements from neighboring properties. The agreement shall indemnify the County in connection with the proposed pipeline for damages and/or claims related to spills, leaks, environmental compliance and other

SUBJECT: Agreement with Lower Tule River Irrigation District for Placement of Irrigation Pipeline on Avenue 176, Avenue 180, Road 136 and Road 148
DATE: July 23, 2019

associated issues as mentioned in detail in the agreement. All work within the County right-of-way will be performed under an encroachment permit at no cost to the County.

FISCAL IMPACT/FINANCING:

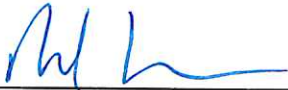
No Net County Cost.

LTRID will be solely responsible for the cost of installation and maintenance of the water line.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

Strategic Initiative No. 2 Economic Well Being includes the goals of protecting the county's agriculture-based economy, which is provided for in this agreement by accommodating an irrigation line for the purposes of supporting agricultural activities.

ADMINISTRATIVE SIGN-OFF:



Reed Schenke, P.E.
Director

cc: County Administrative Office

Attachment(s): Attachment A – Vicinity map
Attachment B – Indemnification Agreement

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF AGREEMENT) Resolution No. _____
WITH LOWER TULE RIVER IRRIGATION) Agreement No. _____
DISTRICT FOR PLACEMENT OF PIPELINE)
ON AVENUE 176, AVENUE 180, ROAD 136)
AND ROAD 148)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD JULY 23, 2019, BY
THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

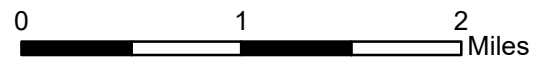
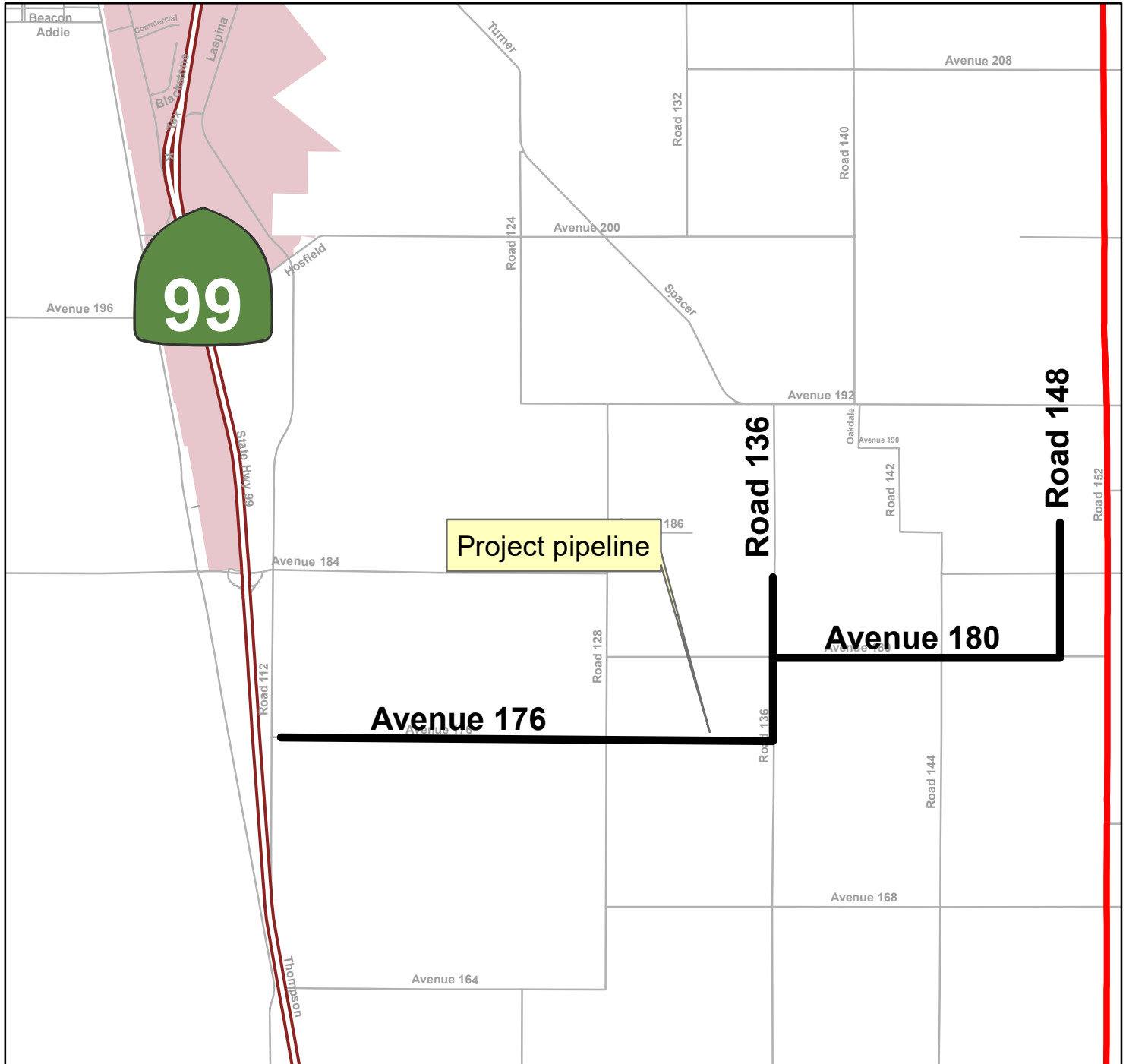
1. Approved an agreement with Lower Tule River Irrigation District (LTRID), in connection with an application for an encroachment permit to place an irrigation pipeline within County rights-of-way of Avenue 176, Avenue 180, Road 136 and Road 148, for the period of July 23, 2019 to July 23, 2044; and
2. Authorized the Chairman to sign the Agreement.

Attachment A

Vicinity Map



Vicinity Map For LTRID Pipeline



Supervisorial District: 2



Attachment B

Indemnification Agreement

Recording Requested by
and Return to:
Reed Schenke
RMA Director
Atten: Craig Anderson

INDEMNIFICATION AGREEMENT
In Connection with
Application for Encroachment Permit

THIS INDEMNIFICATION AGREEMENT (the "Agreement") is entered into this _____ day of _____, 20____, by and between LOWER TULE RIVER IRRIGATION DISTRICT (herein after referred to as LTRID) with its principal place of business at 357 E. Olive Avenue, Tipton, CA 93272 and the County of Tulare ("County").

WHEREAS, LTRID has submitted an application for an encroachment permit (the "Permit Application") attached as EXHIBIT A, to County for a permit granting LTRID an encroachment for the construction of approximately six miles of 15-, 24- and 36-inch diameter Polyvinyl Chloride Irrigation Pipe (PIP) (the "Pipeline"). LTRID intends to construct said Pipeline within the County rights-of-way of Avenue 176, Avenue 180, Road 136 and Road 148 as shown in Exhibit "A"; and

WHEREAS, LTRID will make certain covenants to County in connection with the proposed Pipeline and whereby LTRID will indemnify County for damages or claims related to spill, leaks or other problems associated with the proposed Pipeline.

NOW, THEREFORE, AND IN CONSIDERATION of the mutual covenants contained herein, the parties hereto agree as follows:

1. Indemnification.

- (a) LTRID shall hold harmless, defend and indemnify County, its agents, officers and employees or assigns from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including County property, arising from, or in connection with this agreement or permit including but not limited to construction of the Pipeline, actual, alleged or threatened spill, leak or other release of waste water. This indemnification obligation shall continue beyond the term of this Agreement or permit as to any acts or omissions of LTRID occurring during the term of this Agreement or any extension of this Agreement.
- (b) LTRID shall indemnify, defend and hold harmless the county from and against any claims, actions, or proceedings against the County to attach, set aside, void, or annul any findings, entitlements, certification of California Environmental Quality Act ("CEQA") or other environmental review, and/or approvals by the County

TULARE COUNTY AGREEMENT NO. _____

given in regard to the Project described or identified in this Application, agreement or permit and/or any other related proceedings (hereinafter referred to collectively as “Project”), or to impose personal liability against such County officials, agencies, departments, commissions, agents, officers, or employees resulting from their official involvement in any Project proceedings, including any claims and actions for attorneys’ fees, private attorney general fees and/or costs awarded to any party and against the County.

2. Registration of Pipeline Location. Upon completion of the Pipeline and prior to the acceptance of work in connection with the Permit Application, LTRID will register the location of the Pipeline with USA North 811 or an equivalent underground service locating organization, and shall renew annually to continue to provide for underground service locating. LTRID shall provide proof of registration set forth in Paragraph 15. This obligation runs so long as the Pipeline exists passes to any future owner of the Pipeline.
3. Plans. A set of engineered plans detailing the Pipeline construction shall be submitted to and reviewed by the County. Construction shall be according to the approved set of plans and shall not deviate from said plans. Design and construction standards shall be substantially similar to irrigation Pipeline installations or engineered equivalents.
4. As-builts. Upon completion of construction, and prior to the Pipeline being placed in any service, LTRID shall provide County with an as-built plan set which reflects the location of the Pipeline, its depth, diameter and the location within County right-of-way, prepared by and stamped by a Registered Civil Engineer in good standing in the State of California. LTRID shall provide County with any supplemental surveys to reflect any subsequent corrections and/or changes to the Pipeline.
5. Abandonment. LTRID shall provide the County thirty (30) days written notice set forth in Paragraph 9 below prior to abandoning Pipeline. Pipeline abandonment shall be capped and filled with flowable fill consisting of a controlled low-strength material consisting of fluid mixture of cement, fly ash, aggregate, water and with admixtures as necessary to provide workable properties to the satisfaction of the County.
6. Effectiveness: Term and Termination. The effectiveness of this Agreement is conditioned on the issuance of an encroachment permit pursuant to the Permit Application (the “Pipeline Permit”). The term of this Agreement shall be the same as the term of the Pipeline Permit and any extensions thereof. This indemnification obligation will continue beyond the term of this Agreement or the permit as to any acts or omissions occurring during the term of this Agreement or permit or any extensions of this Agreement or permit.
7. Amendment. This Agreement shall not be modified or amended except by means of a writing signed by each of the parties to this Agreement.

8. Assignment. Subject to Tulare County Ordinance 3-07-1270, LTRID will not assign or transfer their rights or obligations under this Agreement unless the County has given its prior written consent; such consent will not be unreasonably withheld.

9. Notices.

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY: Tulare County Resource Management Agency
5961 S. Mooney Blvd.
Visalia, CA 93277
Phone No.: 559-624-7000
Fax No.: 559-730-2653

LTRID: Lower Tule River Irrigation District
357 E. Olive Avenue
Tipton, CA 93272
Phone No.: 559-686-4716
Fax No.: 559-686-0151
Email: customerservice@ltrid.org

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

10. Power to Grant. The Parties acknowledge that the County may authorize an encroachment permit under Streets and Highway Code § 1460 et seq. and Tulare County Ordinance Code 3-07-1160 et seq. The Parties also acknowledge that the encroachment permit is not a lease and that under Streets and Highways Code § 1463, the permit may be revoked on five (5) days notice.

11. Insurance. Prior to approval of this Agreement by COUNTY, LTRID shall file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in EXHIBIT B attached. Insurance policies shall not be used to limit LTRID liability or to limit the indemnification provisions and requirements of this contract or act in any way to reduce the policy coverage and limits available from the insurer(s).

12. Repairs. LTRID will make all repairs on the project as soon as is possible. In the event LTRID has not commenced a repair referred to in a written notice from County to LTRID within thirty (30) days after date of notice, County will have the right to repair or contract to repair and to be reimbursed by LTRID. The full amount of the reimbursement is to be paid within thirty (30) days after County's delivery to LTRID or a written statement or bill evidencing the cost of the repair.

13. Damages. LTRID is solely responsible for any damages to the Pipeline and any subsequent repairs to the Pipeline and the County's facilities including, but not limited to, road shoulder, and pavement in the County right of way should any excavation, construction, or road work, either by County or any entities permitted by the County to work in County right of way, damage the Pipeline.
14. Lawful Permit. The encroachment permit may become invalid if LTRID has not obtained all necessary permits, if any permits become invalid, or if LTRID fails to comply with the conditions of any permit or this Agreement.
15. Encroachment Fee and Registration. LTRID agrees to pay to the County an annual encroachment fee not to exceed six hundred dollars (\$600) dollars on a reimbursement basis for actual expenditures incurred for Agreement preparation and Permit Application processing. LTRID shall submit payment to the County within 30 days of the date of County's invoice for said payment, and shall provide proof of registration with USA North 811 or an equivalent underground service locating organization with said payment.
16. Exhibits and Recitals. The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
17. Conflict with Laws. This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.
18. Compliance with Law. LTRID shall provide services in accordance with applicable Federal, State and local laws, regulations and directives.
19. Governing Law. The construction and interpretation of this Agreement shall be governed by and construed according to the laws of the State of California.
20. Counterparts. This Agreement may be executed and delivered in multiple counterparts, all of which, when executed and delivered, shall have the full force and effect of an original.
21. Bond. LTRID will file a bond that guarantees the full performance of the work authorized by the permit. The bond must be in a form approved by the County. The amount of the bond will be based on estimated costs to complete the work and repair the highway.
22. Maintenance. LTRID will be responsible for all maintenance, monitoring, repair and up-keep of the Pipeline insuring that it is safe and leak-free.

23. Property Taxes. LTRID acknowledges and understands that this Agreement may create a possessory interest subject to property taxation. LTRID will pay any property taxes levied upon that interest before they become delinquent.
24. Effect of Annexation. If the land on which the Pipeline is to be constructed is annexed to a city, the County may assign to the annexing city all of its rights and responsibilities under this Agreement. The city council or its designee shall be deemed to have all of the rights and responsibilities conferred upon the County by this Agreement.
25. Renewal. This Agreement shall be renewable at the end of twenty-five (25) years from the date of the Agreement unless either party gives written notice of its intention not to renew before expiration of the twenty-five (25) years. County shall notify LTRID of any changes in the terms of this Agreement at least thirty (30) days prior to the notice period for renewal or termination.
26. Recordation. Upon execution of this Agreement by the County and LTRID, this Agreement shall be recorded in the Office of the Tulare County Recorder. From and after the date of recordation, the terms and conditions of this Agreement shall be binding upon the heirs, executors, administrators, grantees, successors and assigns of LTRID as covenants running with the land.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth above.

[remainder of page intentionally blank]

COUNTY OF TULARE
RESOURCE MANAGEMENT AGENCY

By: _____
Chairman Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By: _____
Deputy Clerk

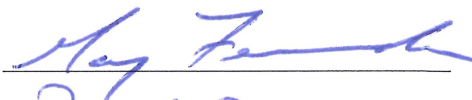
Lower Tule River Irrigation District

By: _____

Title: General Manager

Approved as to form
County Counsel

By:  2019995
Deputy 6/25/19

By: 

Title: Board President

Exhibit "A"

Project Vicinity Map

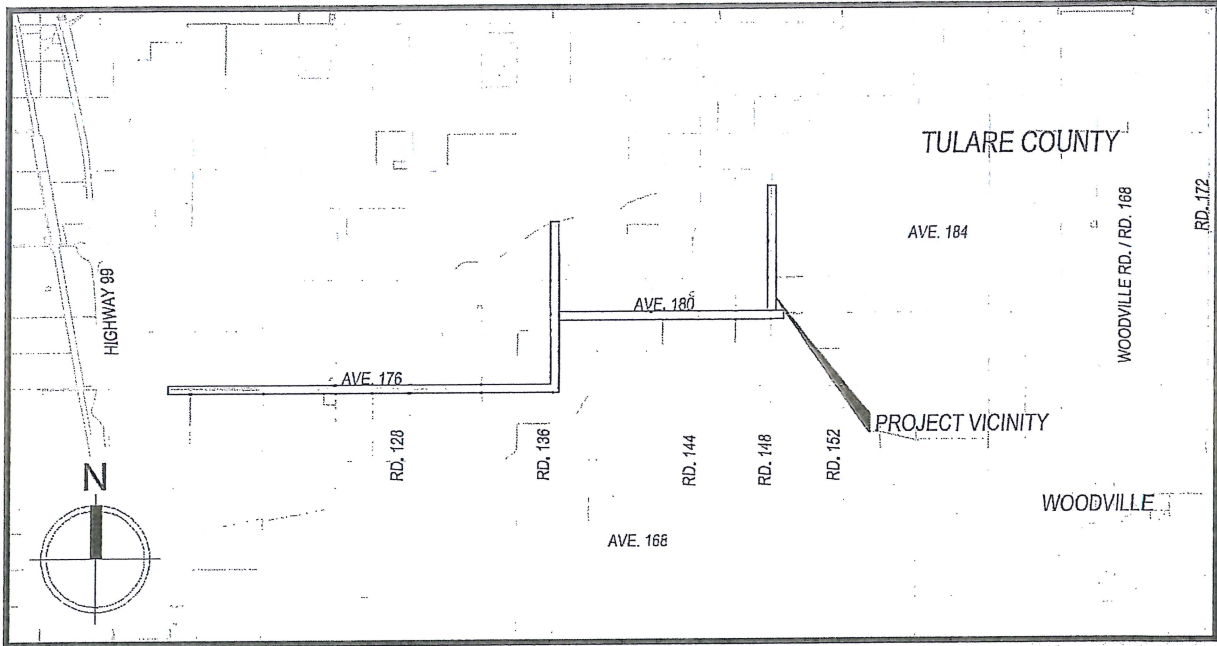


EXHIBIT B
PROFESSIONAL SERVICES CONTRACTS
INSURANCE REQUIREMENTS

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Insurance Services Office Commercial General Liability coverage of \$1,000,000 combined single Limit per occurrence (occurrence Form CG 00 01). If an annual aggregate applies it must be no less than \$2,000,000.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of \$1,000,000 per occurrence. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) Insurance appropriate to the CONTRACTOR'S profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.

B. Specific Provisions of the Certificate

1. CONTRACTOR must submit endorsements to the General Liability and Auto Liability reflecting the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the CONTRACTOR.*
 - b. *For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
 - c. *Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the County.*
2. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors.

a. *Waiver of Subrogation. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the contractor, its employees, agents and subcontractors. CONTRACTOR waives all rights against the County and its officers, agents, official, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.*

C. Deductibles and Self-Insured Retentions

The COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A(-):VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage and a copy of the declarations page from the policy in effect in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.