

**MASTER LICENSE AGREEMENT BETWEEN RIVERSIDE COUNTY FLOOD
CONTROL AND WATER CONSERVATION DISTRICT
AND CITY OF TEMECULA**

1. PARTIES AND DATE.

THIS MASTER LICENSE AGREEMENT ("Master Agreement") is made this ____ day of _____, 20__ by and between the **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**, a body politic ("LICENSOR"), and the **CITY OF TEMECULA**, a municipal corporation ("LICENSEE"). LICENSOR and LICENSEE are sometimes referred to herein individually as "PARTY" and collectively as "PARTIES."

2. RECITALS.

2.1 Licensor. LICENSOR owns, operates and maintains certain flood control and drainage facilities located in the City of Temecula:

- (a) Hereinafter called "CHANNELS"; and
- (b) Access road adjoining the CHANNELS, hereinafter called "ACCESS ROAD";
- (c) Together, CHANNELS and ACCESS ROAD are hereinafter called "LICENSED PROPERTY"; and

These facilities are an essential and integral part of LICENSOR's collection and disposal system of flood and surface waters within the City of Temecula and are located within LICENSOR's existing easements and rights of way.

2.2 Licensee. LICENSEE wishes to enter LICENSED PROPERTY to construct a pedestrian/bicycle trail, this may require the following: (1) removal of existing channel lining, (2) earthwork, (3) construction of retaining walls, (4) construction of concrete and asphalt concrete pavement, (5) installation of protective railing and (6) signing and stripping. LICENSEE shall not damage and shall protect LICENSED PROPERTY, including all improvements and the natural resources thereon, at all times at LICENSEE's sole cost and expense, and LICENSEE may not commit or create, or suffer to be committed or created, any waste, hazardous condition and/or nuisance to occur upon LICENSED PROPERTY.

2.3 Scope of License. This Master License Agreement will serve as a Master Agreement permitting LICENSEE to construct a new pedestrian/bicycle trail extension and interconnection. A Specific Facility License Exhibit ("SFLE") will be developed for each property subject to this Master Agreement, attached hereto. Each SFLE will (1) describe the specific work to be completed, (2) the use of property to be permitted, and (3) other terms that may be required for each location where LICENSEE's facilities are constructed and maintained. Each SFLE shall be subject to the terms of this Master Agreement and shall become a part hereof. Each SFLE shall be executed by LICENSEE. No SFLE provisions shall be revised without LICENSOR's written permission, which shall be granted in LICENSOR's sole discretion. LICENSOR reserves the right to reject any proposal in its sole and absolute discretion, or to request changes thereto prior to acceptance.

2.4 Consideration. LICENSOR desires to consolidate current license agreements for different locations previously entered into, or as the successor-in-interest, and to provide use rights to LICENSEE for property currently being utilized by LICENSEE without express rights for such use, with one master license for a more efficient management of licenses granted by LICENSOR. As consideration and a material inducement to LICENSEE entering into this Master Agreement, LICENSEE agrees to amend the terms and conditions concerning the existing rights *as outlined in that certain License Agreement between the PARTIES for the Santa Gertrudis Creek Channel for recreational purposes executed on March 21, 1995*. LICENSEE has obtained in various agreements for each location listed on SFLE, in return for LICENSOR only having the right to terminate any SFLE for abandonment by LICENSEE, for cause as further described in Section 3.5(b) herein, or as otherwise expressly provided herein. This Master Agreement is made in consideration of the terms, conditions and mutual covenants contained herein, the sufficiency of which are hereby acknowledged.

3. TERMS.

3.1 Grant. Subject to the terms and conditions of this Master Agreement, LICENSOR hereby grants to LICENSEE, its agents and contractors, a revocable, non-exclusive license in, on, over, under and across the Licensed Property described in each SFLE which is necessary to perform the work and for the use specified in each SFLE ("**Facility Project**"), and to obtain ingress and egress to and upon said Licensed Property for the purpose of exercising the rights, privileges and license granted herein.

3.2 Nature of Rights. The permission, rights and privileges granted hereunder are revocable, nonexclusive and nontransferable. The rights granted hereunder in this Master License Agreement and in each SFLE are subject to the prior use and property rights of LICENSOR and all other licenses, covenants, conditions, restrictions, reservations, rights and easements whether of record or not. LICENSEE shall not unreasonably or materially interfere with the use by and operation and activities of LICENSOR on the Licensed Property. LICENSEE shall not, either voluntarily or by action of law, assign or transfer this Master Agreement or any obligation, right, title or interest assumed by LICENSEE herein without the prior written consent of LICENSOR. Section 3.5 notwithstanding, if LICENSEE makes an assignment or transfer of this Master Agreement, any SFLE or any obligation, right, title or interest herein without prior written consent of LICENSOR, LICENSOR may, terminate and revoke the Master Agreement, or the applicable SFLE, provided LICENSEE has received ninety (90) day advance notice of termination. In the event of a proper termination of this Master Agreement, all SFLEs shall terminate. If the assignment is of one or more SFLE(s) only, LICENSOR's rights shall be limited to termination of the applicable SFLE(s).

3.3 Licensed Property "As Is". LICENSEE accepts the Licensed Property in its "as is" condition, with all faults. LICENSEE acknowledges and agrees that LICENSEE is entering the Licensed Property under this Master Agreement and each SFLE based on LICENSEE's own investigations and knowledge of the Licensed Property and that, except as otherwise specifically stated in this License Agreement and each SFLE, neither LICENSOR nor any agent of LICENSOR, has made any representation or warranty whatsoever, express or implied, with regard to the physical condition of the Licensed Property or the suitability of the Licensed Property for any particular purpose or use, including, without limitation, any representations or warranties regarding the applicability or non-applicability of any laws, the soil or subsoil, surface or subsurface conditions, topography, possible Hazardous Materials contamination, fill, drainage, access to public roads, availability of utilities, existence of underground storage tanks, applicability of or compliance with any Environmental Law or any other matter of any nature whatsoever. LICENSOR is not responsible for damage to or loss by theft of LICENSEE's property located in, on or under the Licensed Property.

3.4 Use. LICENSEE shall use the Licensed Property solely for that use described in each SFLE and shall not use it for any other purpose unless approved by LICENSOR. No

change shall be made by LICENSEE in the use of the Licensed Property as described in each SFLE without LICENSOR's prior written approval.

3.5 Term and Termination of License.

(a) Term. This Master Agreement shall commence on the date this Master Agreement is fully approved and executed by the PARTIES and continue for so long as LICENSED PROPERTY is used for the permitted purposes unless terminated pursuant to the terms and conditions in Section 3.5(b) herein.

(b) Termination for Cause. The LICENSOR reserves the right to terminate this Master Agreement, or any one SFLE granted, and any encroachment permit issues there to if, for any reason whatsoever, LICENSOR's General Manager-Chief Engineer determines that LICENSEEs or the public's use of LICENSED PROPERTY is not compatible with LICENSOR's facility's primary flood control purpose or function and LICENSOR shall have the right to terminate this Master Agreement, or any one SFLE granted, and any encroachment permit, hereunder that is subject of or to the default, shall have no obligation to reimburse LICENSEE for any of its improvements to Licensed Property, under the following circumstances:

In the event of a default by LICENSEE of any term or provision of this Master Agreement, which acts of LICENSEE shall include but not be limited to the failure by LICENSEE to perform any obligation under this Master Agreement provided LICENSEE has received thirty (30) days advance written notice of default and LICENSEE has failed to cure the default within ninety (90) days, unless otherwise agreed upon by the PARTIES. In the event that LICENSEE has failed to cure the default as prescribed herein, then LICENSOR shall have the right to immediately terminate this Master Agreement, or any applicable SFLE, for cause by providing notification of such termination in writing, and specifying the effective date thereof.

(c) Termination for Abandonment. In the event that LICENSEE shall abandon the use of the Licensed Property, or any portion thereof, for the permitted purposes described herein, the SFLE for the license granted as to the portion or portions so abandoned shall expire and terminate at the time, each such portion shall be so abandoned or upon the expiration of six (6) months following LICENSEE's abandonment of the property, in which case LICENSOR shall provide written notice to LICENSEE of termination for abandonment.

3.6 Relocation. In the event that LICENSOR determines in its sole but good faith discretion that it requires the Licensed Property subject to any SFLE hereunder for a public project ("Required Property") LICENSOR shall notify LICENSEE of the same, and shall make available to LICENSEE a reasonable relocation area sufficient for relocation of the Facility Project, provided that LICENSOR determines that it has such an area available. In such case, the PARTIES shall amend or terminate the applicable SFLE to remove the Required Property, and shall enter into a new or amended SFLE for the new property onto which the affected Facility Project shall be relocated. If LICENSOR does not have property available for such relocation, notwithstanding any other provision of this Master Agreement, and in addition to its rights set forth in Section 3.5 above, LICENSOR shall have the right to terminate the applicable SFLE. Acquisition of any property and relocation of the Facility Project as described herein shall be at LICENSEE's sole cost and expense.

3.7 Maintenance and Repair. LICENSEE shall, at its own cost and subject to the approval of LICENSOR's General Manager-Chief Engineer or his or her designee, repair and maintain the parts of a Facility Project and Licensed Property - so that they will not at any time be a source of danger to or interference with the present or future roadbed and property of or managed by LICENSOR, or any other activities on the Licensed Property. Unless otherwise specifically addressed in the terms of an individual SFLE, any repair and maintenance work shall be done to LICENSOR's standards.

3.8 Tests and Inspections. LICENSOR shall have the right at any time to inspect the Licensed Property and any Facility Project so as to monitor compliance with this Master Agreement. If, in LICENSOR's sole judgment, any LICENSEE caused installation or condition on, or LICENSEE's use of the Licensed Property has been determined by LICENSOR to have an adverse effect on Licensed Property (whether or not owned by LICENSOR) or LICENSOR's operations, LICENSOR shall be permitted to conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the Licensed Property and a Facility Project, as it determines to be necessary or useful to evaluate the condition of the Licensed Property and a Facility Project. LICENSEE shall cooperate with LICENSOR in any tests or inspections deemed necessary by LICENSOR. LICENSEE shall pay or reimburse LICENSOR, as appropriate, for all reasonable costs and expenses incurred due to the tests, inspections or any

necessary corrective work and inspections thereafter within thirty (30) days of a request for payment.

3.9 Insurance. LICENSEE, at its sole cost and expense, shall obtain and maintain in full force and effect insurance as required by LICENSOR in the amounts and coverage specified and issued by insurance companies as described in Exhibit "B" attached hereto and incorporated herein by reference. Prior to (i) entering the Licensed Property or (ii) performing any work or maintenance on the Facility Project, LICENSEE shall furnish LICENSOR with the insurance endorsements and certificates in the form and amounts specified in Exhibit "B", evidencing the existence, amounts and coverage of the insurance required to be maintained hereunder. LICENSOR reserves the right to review and change the amount and type of insurance coverage it requires in connection with this Master Agreement or the work to be performed on the Facility Project. If, in its sole discretion, LICENSOR allows LICENSEE to obtain insurance requirements varying from those set forth in Exhibit "B", such insurance requirements shall be set forth in Attachment No. 1 to Exhibit "B" (Alternative Insurance Requirements) attached hereto and incorporated herein by reference. A program of self-insurance shall be an acceptable alternative to satisfy the insurance provisions required under this Master Agreement.

3.10 Indemnity. Indemnify, defend and hold harmless LICENSOR, its directors, officers, Board of Supervisors, elected and appointed officials, agents, employees, representatives, independent contractors and subcontractors (collectively "Indemnified PARTIES") from any liability whatsoever, based or asserted upon any act or omission of LICENSEE, its officers, employees, subcontractors, agents or representatives, arising from, related to or in any manner connected with LICENSEE's use and responsibilities in connection therewith of Licensed Property or the condition thereof including, but not limited to, property damage, bodily injury or death or any other element of any kind or nature whatsoever arising from, related to, or in any manner connected with the public use of Licensed Property. LICENSEE shall defend, at its sole expense, all costs and fees including, but not limited to, attorneys' fees, cost of investigation, defense and settlements or awards, Indemnified Parties in any claim or legal action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by LICENSEE, LICENSEE shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of

LICENSOR; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes LICENSEE's indemnification to Indemnified Parties as set forth herein. LICENSEE's obligation hereunder shall be satisfied when LICENSEE has provided to Indemnified Parties the appropriate form of dismissal relieving Indemnified Parties from any liability for the action or claim involved. The specified insurance limits required in this Master Agreement shall in no way limit or circumscribe LICENSEE's obligations to indemnify and hold harmless Indemnified Parties herein from third party claims.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve LICENSEE from indemnifying the Indemnified Parties to the fullest extent allowed by law.

This indemnification provision shall survive termination or expiration of this Master Agreement until such a time as the statute of limitations shall run for any claims that may arise out of this Master Agreement.

3.11 Assumption of Risk and Waiver. LICENSEE shall waive any claim against LICENSOR for damages to Facility Project resulting from LICENSOR's customary operation and maintenance activities performed within Licensed Property or its appurtenant works, including any natural calamity, act of God or any cause or conditions beyond the control of LICENSOR, save and except damages resulting from LICENSOR's active negligence or willful misconduct.

3.12 Defense. The PARTIES hereto shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the PARTIES. LICENSEE shall proceed diligently with the performance of this Agreement pending the resolution of a dispute. Prior to the filing of any legal action related to this Agreement, the PARTIES shall be obligated to attend a mediation session with a neutral third-party mediator agreeable to both PARTIES in the County of Riverside. The PARTIES shall share the cost of mediation.

3.13 Survival of Obligations. All obligations of LICENSEE hereunder not fully performed as of the termination or cessation of this Master Agreement in any manner shall survive the termination of this Master Agreement, including without limitation, each Facility Project, and all obligations concerning the condition of each portion of the Licensed Property.

3.14 Assignment. This Master Agreement and the license granted herein are personal to LICENSEE. LICENSEE shall not assign or transfer (whether voluntary or involuntary) this Master Agreement in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of LICENSOR, which may be withheld in LICENSOR's sole and absolute discretion provided consent shall not be unreasonably delayed, conditioned or withheld. Any assignment made without prior consent by LICENSOR shall be void and without effect and give LICENSOR the right to immediately terminate this Master Agreement pursuant to the terms and conditions in Section 3.2 herein.

3.15 Condemnation. In the event all or any portion of the Licensed Property shall be taken or condemned for public use (including conveyance by deed in lieu of or in settlement of condemnation proceedings), LICENSEE shall receive compensation (if any) only for the taking and damage to the Facility Project. Any other compensation or damages arising out of such taking or condemnation awarded to LICENSEE are hereby assigned by LICENSEE to LICENSOR.

3.16 Restoration of Licensed Property, Claims for Costs. Upon the termination, revocation or cessation of this Master Agreement or any or all SFLE in any manner provided in this Master Agreement, LICENSEE, upon demand of LICENSOR and at LICENSEE's own cost and expense, shall abandon the applicable Facility Project(s) and remove it and restore the Licensed Property, to the same condition in which they were prior to the construction, installation or maintenance of the Facility Project thereunder, reasonable wear and tear excepted unless the PARTIES otherwise agree that removal and restoration is not to be done or not necessary. In no event shall LICENSEE have any claim against LICENSOR for any of the costs of constructing, installing, maintaining or removing the Facility Project. In case LICENSEE shall fail to restore Licensed Property as aforesaid within one hundred eighty (180) days after the effective date of termination, LICENSOR may proceed with such work at the expense of LICENSEE or may assume title and ownership of the Facility Project facilities and appurtenances, if any, and any other property of LICENSEE located on the Licensed Property. No termination hereof shall release LICENSEE from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Facility Project is removed.

3.17 Notice. Any notice hereunder to be given by one PARTY to the other PARTY shall be deemed to be properly served on the date it is deposited in the United States Mail, postage prepaid, addressed as specified below. Either LICENSOR or LICENSEE may change its address for the receipt of notice by giving written notice thereof to the other PARTY of such change.

TO LICENSOR:

Riverside County Flood Control and
Water Conservation District
Attn: Chief of Operations &
Maintenance Division
1995 Market Street
Riverside, CA 92501

TO CITY OF TEMECULA:

Public Works Department
Attn: Patrick Thomas, Director of
Public Works
41000 Main Street
Temecula, CA 92590

3.18 Nondiscrimination. LICENSEE certifies and agrees that all persons employed thereby and any contractors retained thereby with respect to the Licensed Property and the Facility Project are and shall be treated equally without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including but not limited to the Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the California Fair Employment Practices Act.

3.19 Further Acts. LICENSEE agrees to perform any further acts and to execute and deliver in recordable form any documents which may be reasonably necessary to carry out the provisions of this Master Agreement, including, at LICENSOR's sole discretion, the relocation of any Facility Project and the license granted by this Master Agreement at LICENSEE's expense. Any order by LICENSOR for relocation of any Facility Project shall be in accordance with Section 3.6 of this Master Agreement.

3.20 Non-Exclusive License. The license granted by this Master Agreement is not exclusive and LICENSOR specifically reserves the right to grant other licenses within the vicinity of any Facility Project, provided that any such licenses shall not unreasonably interfere with LICENSEE's use of the Licensed Property.

3.21 Severability. If any term, covenant, condition or provision of this Master Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Master Agreement, or the application thereof

to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

3.22 Entire Agreement. This Master Agreement, the Exhibits incorporated hereto, and each subsequently executed and incorporated SFLE constitute the entire agreement between LICENSOR and LICENSEE with respect to the subject matter hereof and supersede all prior verbal or written agreements and understandings between the PARTIES with respect to the items set forth herein.

3.23 Governing Law and Venue. This Master Agreement shall be governed by the laws of the State of California and venue shall be set in the County of Riverside.

3.24 Termination of Previous License Agreement(s). This Master Agreement shall supersede and terminate the Previous License Agreement(s) listed on the Specific Facility License Exhibit (SFLE) Exhibit "A".

//

//

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the PARTIES hereto have executed this Master License Agreement on

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By _____
JASON E. UHLEY
General Manager-Chief Engineer

By _____
KAREN S. SPIEGEL, Chairwoman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER
Clerk of the Board

By _____
SYNTHIA M. GUNZEL
Chief Deputy County Counsel

By _____
Deputy

(SEAL)

RECOMMENDED FOR APPROVAL

CITY OF TEMECULA

By _____
JAMES STEWART
Mayor

APPROVED AS TO FORM:

ATTEST:

By _____
PETER M. THORSON
City Attorney

By _____
RANDI JOHL
City Clerk

(SEAL)

Handwritten: 11/29/2020

Template

Sample Specific Facility License Exhibit No:

For Facility Project No.

Facility Project Title:

This Specific Facility License ("SFLE") is entered into this ____ day of _____, 20____, by and between the Riverside County Flood Control and Water Conservation District ("LICENSOR") and _____ ("LICENSEE"), pursuant to the provisions of the Master Agreement dated _____, 20____, which is incorporated herein by reference, and all terms and definitions contained in the Master Agreement shall apply to this SFLE.

1. FACILITY PROJECT DESCRIPTION AND USE.

2. LICENSED PROPERTY LOCATION AND DURATION OF WORK.

The work to be performed in connection with the Facility Project shall be performed at [insert address and/or APN #]. The Facility Project shall commence no later than _____, and shall be completed no later than _____ unless the Parties agree to amend such commencement and completion dates.

Template

3. TERMINATION OF PREVIOUS CONTRACTS.

4. **PERSONNEL.**

The Facility Project will be performed or constructed by the "LICENSEE". The **Public Works Department** representative responsible for the Facility Project can be contacted at:

5. **INDEMNITY AND INSURANCE REQUIREMENTS.**

LICENSEE shall fully comply with all terms and obligations contained within the Master Agreement, which are incorporated herein by this reference, including all insurance and indemnity requirements.

//

//

IN WITNESS WHEREOF, LICENSEE acknowledges that it understands and agrees to all of the above terms in this Specific Facility License Exhibit on the day and year first above written.

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By: _____ Date: _____
JASON E. UHLEY
General Manager-Chief Engineer

CITY OF TEMECULA

By: _____ Date: _____
PATRICK THOMAS
Director of Public Works

EXHIBIT B

LICENSEE shall not commence operations until LICENSOR has been furnished with original certificate(s) of insurance and original certified copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section.

Without limiting or diminishing LICENSEE's obligation to indemnify or hold LICENSOR harmless, LICENSEE shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement:

A. Workers' Compensation:

If LICENSEE has employees as defined by the State of California, LICENSEE shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of LICENSOR.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of LICENSEE's performance of its obligations hereunder. Policy shall name the LICENSOR and COUNTY, its agencies, Districts, special

INSURANCE REQUIREMENTS

EXHIBIT B

Districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as additional insureds. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If LICENSEE's vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then LICENSEE shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name the LICENSOR and COUNTY, its agencies, Districts, special Districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as additional insureds.

D. Professional Liability:

LICENSEE shall cause any architect or engineer retained by LICENSEE in connection with the performance of LICENSEE's obligations under this Agreement to maintain Professional Liability Insurance providing coverage for the performance of their work included within this

INSURANCE REQUIREMENTS

EXHIBIT B

Agreement, with a limit of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. LICENSEE shall require that, if such Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and that such architect or engineer shall purchase at such architect or engineer's sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that such architect or engineer has maintained continuous coverage with the same or original insurer. Coverage provided under items: 1), 2) or 3) shall continue for the term specified in the insurance policy as long as the law allows.

E. Pollution and Asbestos Liability:

LICENSEE or its construction contractor(s) shall obtain, at its sole expense and keep in effect during the term of the contract, Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) covering LICENSEE's or its construction contractor(s) liability for a third party bodily injury and property damage arising from pollution conditions caused by the LICENSEE or its construction contractor(s) while performing their operations under the contract. The insurance coverage

INSURANCE REQUIREMENTS

EXHIBIT B

shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the LICENSOR and COUNTY. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance.

LICENSEE or its construction contractor(s) shall maintain Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract. Any self-insured retention/deductible amount shall be submitted to the LICENSOR and COUNTY for review and approval. If LICENSEE or its construction contractor(s) maintains broader coverage and/or higher limits than the minimums shown above, the LICENSOR requires and shall be entitled to the broader coverage and/or higher limits maintained by LICENSEE or its construction contractor(s). Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the LICENSOR.

In the event, LICENSEE or its construction contractor(s) encounters materials on the site that is believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, LICENSEE or its

INSURANCE REQUIREMENTS

EXHIBIT B

construction contractor(s) shall immediately stop work in the area affected and report the condition to the LICENSOR and COUNTY in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the LICENSOR, COUNTY and LICENSEE, if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the LICENSOR, COUNTY and LICENSEE.

LICENSEE or its construction contractor(s) shall not be required to perform without consent any work relating to asbestos or polychlorinated biphenyl (PCB).

F. **General Insurance Provisions – All Lines:**

- i. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the County Risk Manager. If the County Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- ii. The LICENSEE must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention

INSURANCE REQUIREMENTS


EXHIBIT B

exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention deemed unacceptable to the LICENSOR, and at the election of the County Risk Manager, LICENSEE's carriers shall either: 1) reduce or eliminate such self-insured retention with respect to this Agreement with LICENSOR, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

- iii. LICENSEE shall cause their insurance carrier(s) or its contractor's insurance carrier(s), to furnish LICENSOR with 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; and 2) if requested to do so orally or in writing by the County Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to the LICENSOR prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If LICENSEE

INSURANCE REQUIREMENTS

EXHIBIT B

insurance carrier(s) policies does not meet the minimum notice requirement found herein, LICENSEE shall cause LICENSEE's insurance carrier(s) to furnish a 30 day Notice of Cancellation  (C)

Endorsement. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless LICENSOR receives, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto, evidencing coverages set forth herein and the insurance required herein is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.

- iv. It is understood and agreed by the PARTIES hereto that LICENSEE's insurance shall be construed as primary insurance, and LICENSOR's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- v. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or there is a material change in the equipment to be used in the performance of the scope of work which will add additional exposures (such as the use

INSURANCE REQUIREMENTS

EXHIBIT B

of aircraft, watercraft, cranes, etc.); or the term of this Agreement, including any extensions thereof, exceeds five (5) years,



LICENSOR reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by LICENSEE has become inadequate.

- vi. LICENSEE shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- vii. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to LICENSOR.
- viii. LICENSEE agrees to notify LICENSOR of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

INSURANCE REQUIREMENTS