

COUNTY SERVICE AREA

INDEPENDENT CONTRACTOR AGREEMENT

THIS CONTRACT is entered into this _____ day of _____, 20____, by and between the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and _____, hereinafter called CONTRACTOR. The parties agree as follows:

1. DUTIES. CONTRACTOR agrees to exercise special skill to accomplish the following result: See Attachment "E"
2. COMPENSATION. In consideration for CONTRACTOR accomplishing said result, COUNTY agrees to pay CONTRACTOR as follows: Upon satisfactory completion of work in accordance with Attachment "E"
3. TERM. The term of this contract shall be: from Board Approval through _____.
4. EARLY TERMINATION. Either party hereto may terminate this contract at any time by giving 30 days written notice to the other party.
5. INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS. CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of paragraphs 5 and 6 shall include, without limitation, its officers, agents, employees and volunteers) from and against:
 - A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the CONTRACTOR'S performance under the terms of this Agreement, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons.
 - B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).
6. INSURANCE. CONTRACTOR, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain at minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by County shall be excess of CONTRACTOR'S insurance coverage and shall not contribute to it.

If CONTRACTOR utilizes one or more subcontractors in the performance of this Agreement, CONTRACTOR shall obtain and maintain Independent Contractor's Insurance as to each subcontractor or otherwise provide evidence of insurance coverage for each subcontractor equivalent to that required of CONTRACTOR in this Agreement, unless CONTRACTOR and COUNTY both initial here _____ / _____.

- A. Types of Insurance and Minimum Limits

(1) Worker's Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall not be required if the CONTRACTOR has no employees and certifies to this fact by initialing here _____.

(2) Automobile Liability Insurance for each of CONTRACTOR's vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by CONTRACTOR's employees), leased or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage shall not be required if vehicle use by CONTRACTOR is not a material part of performance of this Agreement and CONTRACTOR and COUNTY both certify to this fact by initialing here _____/_____.

(3) Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000.00 combined single limit, including coverage for: (a) bodily injury, (b) personal injury, (c) broad-form property damage, (d) contractual liability, and (e) cross-liability.

(4) Professional Liability Insurance in the minimum amount of \$_____ combined single limit, if, and only if, this Subparagraph is initialed by CONTRACTOR and COUNTY _____/_____.

B. Other Insurance Provisions

(1) If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, CONTRACTOR agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post agreement coverage") and any extensions thereof. CONTRACTOR may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable.

(2) All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contain the following clause:

"The County of Santa Cruz, its officials, employees, agents and volunteers are added as an additional insured as respects the operations and activities of, or on behalf of, the named insured performed under Agreement with the County of Santa Cruz."

(3) All required insurance policies shall be endorsed to contain the following clause:

"This insurance shall not be canceled until after thirty (30) days prior written notice has been given to:

Public Works Department
Attention: Susann Rogberg

701 Ocean Street, Room 410
Santa Cruz, CA 95060"

(4) CONTRACTOR agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Agreement with Certificates of Insurance for all required coverages. All Certificates of Insurance shall be delivered or sent to: Public Works Department, 701 Ocean Street, Room 410, Santa Cruz, CA 95060, Attn: Susann Rogberg

7. EQUAL EMPLOYMENT OPPORTUNITY. During and in relation to the performance of this Agreement, CONTRACTOR agrees as follows:

A. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, pregnancy, sex, sexual orientation, age (over 18), veteran status or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to the following: recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Agreement provides compensation in excess of \$50,000 to CONTRACTOR and if CONTRACTOR employs fifteen (15) or more employees, the following requirements shall apply:

(1) The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, pregnancy, sex, sexual orientation, age (over 18), veteran status, or any other non-merit factor unrelated to job duties. In addition, the CONTRACTOR shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in CONTRACTOR's solicitation of goods and services. Definitions for Minority/Women/disabled Business Enterprises are available from the COUNTY General Services Purchasing Division.

(2) In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further agreements with the COUNTY.

(3) The CONTRACTOR shall cause the foregoing provisions of this Subparagraph 7B. to be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

8. INDEPENDENT CONTRACTOR STATUS. CONTRACTOR and COUNTY have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of COUNTY. CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. CONTRACTOR is not entitled to any employee benefits. COUNTY agrees that

CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The CONTRACTOR rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COUNTY may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) the skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) CONTRACTOR and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors which indicate that CONTRACTOR is an independent contractor.

By their signatures to this Agreement, each of the undersigned certifies that it is his or her considered judgment that the CONTRACTOR engaged under this Agreement is in fact an independent contractor.

9. CONTRACTOR represents that its operations are in compliance with applicable County planning, environmental and other laws or regulations.

10. CONTRACTOR is responsible to pay prevailing wages and maintain records as required by Labor Code Section 1770 and following.

11. NONASSIGNMENT. CONTRACTOR shall not assign this Agreement without the prior written consent of the COUNTY.

12. RETENTION AND AUDIT OF RECORDS. CONTRACTOR shall retain records pertinent to this Agreement for a period of not less than five (5) years after final payment under this Agreement or until a final audit report is accepted by COUNTY, whichever occurs first. CONTRACTOR hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller, the Auditor General of the State of California, or the designee of either for a period of five (5) years after final payment under this Agreement.

13. PRESENTATION OF CLAIMS. Presentation and processing of any or all claims arising out of or related to this Agreement shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

14. ATTACHMENTS. This Agreement includes the following attachments : Attachment "E" and Insurance Certificates

15. LIVING WAGE. This agreement is covered under Living Wage provisions if this

section is initialed by COUNTY _____.

This agreement is subject to the provisions of Santa Cruz County Code Chapter 2.122, requiring payment of a living wage to covered employees, if item #15 above is initialed by the COUNTY. Non-compliance during the term of the contract will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

If a contract for Living Wage covered services in excess of \$50,000 is terminated prior to its expiration, any new contract with a subsequent contractor for the same services must include this term:

“CONTRACTOR shall make best efforts to offer employment to qualified employees of the prior contractor for the performance of this contract. Such efforts shall not be required in regard to employees who are (1) exempt under the Fair Labor Standards Act, (2) family members of the prior contractor, (3) employed by the prior contractor for less than six months, or (4) convicted of a job-related or workplace crime. Upon request by the COUNTY, the CONTRACTOR shall demonstrate to the COUNTY that good faith efforts have been made to comply with this provision.”

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

COUNTY OF SANTA CRUZ

CONTRACTOR

By: _____

By:

Address:

APPROVED AS TO FORM:

Office of County Counsel

Telephone:

Tax ID No.

Insurance Approved by:

Risk Management

DISTRIBUTION: Auditor-Controller
Contractor
Public Works

Attachment E

_Contractor

Contract No.

_Street

State Contractors License No.

_City, State, Zip Code

Type of License

_Phone Number

TAX ID NUMBER

CONTRACTOR agrees to furnish all labor, equipment and materials to complete the following work:

_____ (attach additional sheets as necessary)

COUNTY OF SANTA CRUZ

_CONTRACTOR

DIRECTOR OF PUBLIC WORKS OR
PURCHASING AGENT