

**SAMPLE AGREEMENT FOR CONSULTANT SERVICES**

THIS AGREEMENT, made and entered into this xxth day of Month 20YY,

BY AND BETWEEN

Watershed Conservation Authority  
(WCA), a joint powers authority  
between the Rivers and Mountains  
Conservancy (RMC) and the Los  
Angeles County Flood Control  
District

AND

Company  
Address 1  
Address 2  
City, ST Zip  
Email: xxxx  
Phone: (xxx) xxx-xxxx  
hereinafter referred to as  
"Consultant,"

WCA has determined that it is a matter of public convenience and necessity to engage the specialized services of a Consultant to provide [DESCRIPTION].

Consultant is a recognized professional with extensive experience and training in this specialized field. In rendering these services, Consultant shall, at a minimum, exercise the ordinary care and skill expected of the average practitioner in Consultant's profession acting under similar circumstances. The work will involve the performance of professional, expert, and/or technical services of a temporary or part-time duration; and

The parties hereto do mutually agree as follows:

1. Definition

"WCA" means the joint power authority between the Rivers and Mountains Conservancy (RMC), and the Los Angeles County Flood Control District.

2. Consultant's Services

The scope of work shall be as outlined above and in the attached Exhibit A dated, Month Date, Year.

## Exhibit M - Sample Agreement for Consultant Services with Insurance Alternatives

WCAXXX

FYXX/XX

### 3. Consideration

In consideration of the performance by Consultant in a manner satisfactory to WCA of the services described in Article 2 above, including receipt and acceptance of such work by the Executive Officer of the Watershed Conservation Authority (hereinafter called Executive Officer) or authorized representative, WCA agrees to pay Consultant a maximum not to exceed fee of XXXX Dollars (\$XXXXX). Services will be rendered beginning Month Date, Year and end by Month Date, Year.

WCA shall compensate Consultant as follows:

- a. Monthly payments for the work accomplished shall be made upon verification and acceptance of such work by the Executive Officer or authorized representative. Monthly invoices shall be accompanied by an analysis of work completed for the invoice period. This analysis shall be prepared in a format satisfactory to Executive Officer or authorized representative.
- b. Supplemental Consultant Services may be required at WCA's discretion, upon prior written authorization by Executive Officer or authorized representative, and will be based on Consultant's fee schedule on file with Executive Officer or authorized representative.
- c. If Cost of Living Adjustments (COLA) are provided in the attachment, WCA shall limit COLAs to the lesser of: 1) the average salary increase or decrease granted to WCA employees or 2) the increase or decrease from the previous fiscal year's U.S. Department of Labor Bureau of Labor Statistics' Urban Consumer Price Index for Los Angeles-Riverside-Orange WCA, CA. If the COLA is based on the CPI, the adjustment shall be based on the change in the CPI from time of execution of this contract to the time at which the COLA is to be made. In the event fiscal circumstances ultimately prevent the Board of Supervisors from approving any increase in employee salaries for a fiscal year, Consultant will not receive a COLA for the contract period which coincides with that fiscal year.
- d. In the event that budget reductions occur in any fiscal year covered by this Agreement that may cause WCA to consider terminating this Agreement, the parties agree to attempt to renegotiate the terms of this Agreement to reduce the cost thereof in lieu of termination under the termination provisions of the contract.

## Exhibit M - Sample Agreement for Consultant Services with Insurance Alternatives

WCAXXXX

FYXX/XX

- e. Consultant will not be required to perform services which will exceed the contract amount, scope of work, and contract dates without amendment to this Agreement.
- f. Consultant will not be paid for any expenditure beyond the contract amount stipulated without a written amendment to this Agreement.

#### 4. Equipment and Supplies

Consultant agrees to furnish all necessary equipment and supplies used in the performance of the aforementioned services.

#### 5. WCA's Responsibility

WCA will make available any items specified in the Request for Proposals.

#### 6. WCA's Representative

Executive Officer, or his authorized representative, shall represent WCA in all matters pertaining to the services to be rendered pursuant to this Agreement.

#### 7. Terms and Termination

The term of this Agreement shall commence on the date stipulated on Page 1 of this agreement, through **Month Date, Year** and unless otherwise modified, shall terminate on the date that the work is accepted by WCA. The Parties may cancel or terminate this Agreement for any lawful reason, without any liability other than payment for work already performed, up to the date of termination by giving three days written notice of such termination to the other Party.

**This agreement may be extended one year, contingent upon acceptable performance of services per the WCA Executive Officer or authorized representative.**

Consultant shall be paid the reasonable value of services rendered. In the event of any such termination by WCA, Consultant shall provide to WCA a termination report consisting of all drawings, specifications, reports, and data accumulated to the date of such termination in a form capable of assimilation for use by WCA.

#### 8. Mutual Indemnification

For damages, claims, liabilities, costs, suits, or expenses arising from Consultant's lawful activities on behalf of WCA under this Agreement, WCA agrees to indemnify and hold harmless Consultant against any and all damages, claims, liabilities, costs, suits, or

**Exhibit M - Sample Agreement for Consultant Services with Insurance Alternatives**

**WCAXXXX**

**FYXX/XX**

expenses arising from, or connected with, the negligent or willful acts and/or omissions of WCA.

Consultant agrees to indemnify, defend, and save harmless WCA, RMC, and the Los Angeles County Flood Control District, their Board of Supervisors, Executive Officers, agents, its elected or appointed officials, officers, agents, attorneys and employees from and against any and all claims, suits or causes of action including liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from, or connected with, Consultant's negligent, willful, or unlawful actions, operations, or services hereunder including any Workers' Compensation suits, liability, or expense arising from, or connected with, services pursuant to this Agreement.

9. Liability & Insurance OR Reserved [No Text]

Two alternative Indemnification and Insurance Provisions are set forth in Exhibit B of this Agreement.

Consultant has selected one of the two alternative Indemnification and Insurance Provisions and has indicated its selection by initialing the selected alternative as follows:

Alternative 1 \_\_\_\_\_ Alternative 2 \_\_\_\_\_

This Agreement shall be subject to the Indemnification and Insurance Provisions set forth in the alternative identified by Consultant above. Such provision is hereby incorporated into this Article by reference.

10. Anti-Discrimination

The Consultant shall abide by the following provisions found in Section 4.32.010 et seq. of the Los Angeles County Code:

Consultant certifies and agrees that all persons employed by Consultant, its affiliates, subsidiaries, or holding companies are, and will be, treated equally by Consultant without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with state and federal anti-discrimination laws. Consultant further certifies and agrees that it will deal with its subconsultants, bidders, and vendors without regard to or because of race, religion, ancestry, national, origin, or sex. Consultant agrees to allow access to its employment records during regular business hours to verify compliance with the foregoing provisions when so requested by WCA.

Consultant specifically recognizes and agrees that if WCA finds that any of the foregoing

## Exhibit M - Sample Agreement for Consultant Services with Insurance Alternatives

WCAXXXX

FYXX/XX

provisions have been violated, the same shall constitute a material breach of contract upon which WCA may determine to cancel, terminate, or suspend the contract. While WCA reserves the right to determine individually that the anti-discrimination provision of the contracts have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Consultant has violated state or federal anti-discrimination laws shall constitute a finding by WCA that Consultant has violated the anti-discrimination provisions of the contract.

At its option, and in lieu of canceling, terminating, or suspending the contract, WCA may impose damages for any violation of the anti-discrimination provisions of this paragraph, in the amount of Two Hundred Dollars (\$200) for each violation found and determined. WCA and Consultant specifically agree that the aforesaid amount shall be imposed as liquidated damages, and not as a forfeiture or penalty. It is further specifically agreed that the aforesaid amount is presumed to be the amount of damages sustained by reason of any such violation, because from the circumstances and the nature of the violation, it is impracticable and extremely difficult to fix actual damages.

### 11. Independent Consultant Status

This Agreement is by and between WCA and Consultant and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between WCA and Consultant.

Consultant understands and agrees that all persons furnishing services to WCA pursuant to this Agreement are, for purposes of Workers' Compensation liability, employees solely of Consultant and not of WCA.

Consultant shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any person for injuries arising from, or connected with, services performed on behalf of Consultant pursuant to this Agreement.

### 12. WCA's Quality Assurance Plan

WCA, or its agent, will evaluate Consultant's performance under this Agreement on not less than a semi-annual basis. Such evaluation will include assessing Consultants' compliance with all contract terms and performance standards. Consultant deficiencies which WCA determines are severe or continuing, and that may place performance of the Agreement in jeopardy if not corrected, will be reported to the WCA Board. The report will include improvement/corrective action measures taken by WCA and Consultant. If improvement does not occur consistent with the corrective action measures, WCA may terminate this Agreement or impose other penalties as specified in this Agreement.

## Exhibit M - Sample Agreement for Consultant Services with Insurance Alternatives

WCAXXXX

FYXX/XX

### 13. Assignment

This Agreement shall not be assigned without the prior written consent of WCA. Any attempt to assign without such consent shall be void and confer no rights on any third parties.

### 14. Forum Selection

Consultant hereby agrees to submit to the jurisdiction of the courts of the State of California. The exclusive venue of any action brought by Consultant, on Consultant's behalf or on the behalf of any subconsultant, which arises from this Agreement or is concerning or connected with services performed pursuant to this Agreement, shall be deemed to be in the courts of the State of California located in Los Angeles, California.

### 15. Conflict of Interest

No WCA employee in a position to influence the award of this Agreement or any competing agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by Consultant herein, or have any other direct or indirect financial interest in this Agreement.

### 16. Prohibition from Involvement in Bidding Process

Consultant understands and agrees that neither it nor its subsidiaries shall be involved in any way in the bidding process on any Request for Proposal developed or prepared by or with the assistance of Consultant's services rendered pursuant to this Agreement, either as a prime Consultant or subconsultant, or as a Consultant to any other prime Consultant or subconsultant. Any such involvement by Consultant shall result in the rejection by the WCA of the bid by the prime Consultant in question.

### 17. Gratuities

It is improper for any WCA Executive Officer, employee, or agent to solicit consideration, in any form, from Consultant with the implication, suggestion, or statement that Consultant's provision of the consideration may secure more favorable treatment for Consultant in the award of the contract or that Consultants' failure to provide such consideration may negatively affect WCA's consideration of Consultant's submittal. Consultant shall not offer or give, either directly or through an intermediary, consideration, in any form, to a WCA Executive Officer, employee, or agent for the purpose of securing favorable treatment with respect to the award of the contract.

Consultant shall immediately report any attempt by a WCA Executive Officer, employee,

## Exhibit M - Sample Agreement for Consultant Services with Insurance Alternatives

WCAXXXX

FYXX/XX

or agent to solicit such improper consideration. The report shall be made to Executive Officer or authorized representative.

Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

### 18. Termination for Improper Consideration

WCA may, by written notice to Consultant, immediately terminate the right of Consultant to proceed under this Agreement if it is found that consideration, in any form, was offered or given by Consultant, either directly or through an intermediary, to any WCA Executive Officer, employee, or agent with the intent of securing the Agreement or securing favorable treatment with respect to the award, amendment, or extension of the Agreement or the making of any determinations with respect to Consultants' performance pursuant to the Agreement. In the event of such termination, WCA shall be entitled to pursue the same remedies against Consultant as it could pursue in the event of default by Consultant.

Consultant shall immediately report any attempt by a WCA Executive Officer or employee to solicit such improper consideration. The report shall be made either to WCA manager charged with the supervision of the employee or to WCA Executive Officer or authorized representative.

Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

### 19. Notice to Employees Regarding the Federal Earned Income Credit

Consultant shall notify its employees, and shall require each subconsultant to notify its employees, that they may be eligible for the federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirement set forth in Internal Revenue Service Notice 1015.

### 20. Reduction of Solid Waste

Consistent with the WCA's policy to reduce the amount of solid waste deposited in landfills, the Consultant agrees to use recycled-content paper to the maximum extent possible on the project.

### 21. WCA Rights

The WCA may employ, either during or after performance of this contract, any right of

## Exhibit M - Sample Agreement for Consultant Services with Insurance Alternatives

WCAXXX

FYXX/XX

recovery the WCA may have against the Consultant by any means it deems appropriate including, but not limited to, set-off, action at law or in equity, withholding, recoupment, or counterclaim. The rights and remedies of the WCA under this contract are in addition to any right or remedy provided by California law.

### 22. Fair Labor Standards Act

Consultant shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless WCA, its agents, Executive Officers and employees from any and all liability including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law including, but not limited to, the Federal Fair Labor Standards Act for services performed by Consultant's employees for which WCA may be found jointly or solely liable.

### 23. Prevailing Wage Requirements

Consultant shall comply with all applicable prevailing wage requirements.

### 24. Employment Eligibility Verification

Consultant warrants that it fully complies with all federal statutes and regulations regarding employment of aliens and others, and that all its employees performing services hereunder meet the citizenship or alien status requirements contained in federal statutes and regulations. Consultant shall obtain, from all covered employees performing services hereunder, all verifications and other documentation of employment eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. Consultant shall retain such documentation for all covered employees for the period prescribed by law. Consultant shall indemnify, defend, and hold harmless WCA, its Executive Officers and employees from employer sanctions and any other liability which may be assessed against Consultant or WCA in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Agreement.

### 25. Consultant Responsibility and Debarment

- a. A responsible Consultant is a Consultant who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the contract. It is the WCA's policy to conduct business only with responsible consultants.
- b. The Consultant is hereby notified that if the WCA acquires information concerning the performance of the Consultant on this or other



## Exhibit M - Sample Agreement for Consultant Services with Insurance Alternatives

WCAXXXX

FYXX/XX

contracts which indicates that the Consultant is not responsible, the WCA may, in addition to other remedies provided in the contract, debar the Consultant from bidding on WCA contracts for a specified period of time not to exceed three years, and terminate any or all existing contracts the Consultant may have with the WCA.

- c. The WCA may debar a Consultant if the Board finds, in its discretion, that the Consultant has done any of the following: 1) violated any term of a contract with the WCA; 2) committed any act or omission which negatively reflects on the Consultant's quality, fitness, or capacity to perform a contract with the WCA or any other public entity, or engaged in a pattern or practice which negatively reflects on same; 3) committed an act or offense which indicates a lack of business integrity or business honesty; or 4) made or submitted a false claim against the WCA or any other public entity.
- d. These terms shall also apply to subconsultants of the WCA Consultant.

### 26. No Payment for Services Provided Following Expiration and/or Termination of Agreement

Consultant shall have no claim against WCA for payment for any money or reimbursement, of any kind whatsoever, for any service provided by Consultant after the expiration or other termination of this Agreement. Should Consultant receive any such payment it shall immediately notify WCA and shall immediately repay all such funds to WCA. Payment by WCA for services rendered after expiration/termination of this Agreement shall not constitute a waiver of WCAs' right to recover such payment from Consultant. This provision shall survive the expiration or other termination of this Agreement.

### 27. Notices

Any notice required or desired to be given pursuant to this Agreement shall be given in writing and addressed as follows:

#### WCA

Watershed Conservation Authority  
100 N. Old San Gabriel Canyon Road  
Azusa, CA 91702  
Attention: Mark Stanley

**Exhibit M - Sample Agreement for Consultant Services with Insurance Alternatives**

WCAXXXX

FYXX/XX

Consultant

Company  
Address 1  
City, ST Zip

The address for notice may be changed by giving notice pursuant to this paragraph.

28. Entire Agreement

This contract constitutes the entire Agreement between WCA and Consultant and may be modified only by further written Agreement between the parties hereto.

WCA

Company

By \_\_\_\_\_  
Mark Stanley  
Executive Officer

By \_\_\_\_\_  
Company Contact  
Contact Title

**Exhibit M - Sample Agreement for Consultant Services with Insurance Alternatives**

WCAXXX

FYXX/XX

**Exhibit A**

Company

Scope of Work

Month Date, Year

(1 page)

Exhibit B

ALTERNATIVE 1

**INDEMNIFICATION AND INSURANCE PROVISIONS**

I. INDEMNIFICATION

CONSULTANT agrees to indemnify, defend, and save harmless Watershed Conservation Authority (WCA), Rivers and Mountains Conservancy (RMC), and Los Angeles County Flood Control District (District), its agents, appointed and elected officers, and employees from and against any and all liability, expense (including defense costs and legal fees), or claims for damages of any nature whatsoever, including without limitation, bodily injury, death, personal injury, or property damage (including property of CONSULTANT), arising from, or connected with, any alleged willful or negligent act, error, or omission of CONSULTANT, its agents, or subconsultants of any tier.

The foregoing paragraph notwithstanding, CONSULTANT further agrees to indemnify, defend, and save harmless WCA, RMC, the District and their respective agents, appointed and elected officers, and employees from and against any Workers' Compensation suits, liability, or expense arising from, or connected with, any services performed pursuant to this agreement on behalf of CONSULTANT by any person.

Neither the CONSULTANT, nor its agents and subconsultants of any tier, shall be obligated to indemnify the WCA and its related persons and entities for liabilities caused by the active negligence of the WCA and its related persons and entities. However, this provision does not limit any obligation to defend or indemnify the WCA and its related persons and entities arising under the policies of insurance maintained by the CONSULTANT under this provision.

II. INSURANCE

Without limiting CONSULTANT indemnification of WCA and during the term of this Agreement, CONSULTANT shall provide and maintain at its own expense the following programs of insurance. Such programs and evidence of insurance shall be satisfactory to the WCA and primary to and not contributing with, any other insurance maintained by the WCA. Certificate(s) or other evidence of coverage shall be delivered to the Watershed Conservation Authority, 100 N. Old San Gabriel Canyon Road, Azusa, CA 91702 prior to commencing services under this Agreement, shall specifically identify this Agreement, and shall contain the express condition that WCA is to be given written notice by registered mail at least thirty (30) days in advance of any modification or termination of insurance.

Failure by CONSULTANT to procure and maintain the required insurance shall constitute a material breach of contract upon which WCA may immediately terminate or suspend this Agreement.

**Exhibit M - Sample Agreement for Consultant Services with Insurance Alternatives**

**WCAXXXX**

**FYXX/XX**

**A. Liability:**

Such insurance shall be endorsed naming the Watershed Conservation Authority as an additional insured and shall include:

1. 1. General liability insurance written on a commercial general liability form or on a comprehensive general liability form covering the hazards of premises/operations, contractual, independent contractors, advertising, products/completed operations, broad form property damage, and personal injury with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.

2. 2. Comprehensive auto liability for all owned, non-owned, and hired vehicles with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.

a. If written with an annual aggregate limit, the policy limit should be three times the above required occurrence limit.

b. If written on a claims form, the CONSULTANT shall be required to provide an extended two-year reporting period commencing upon termination or cancellation of this Agreement.

**B. Workers' Compensation:**

Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with a One Million Dollar (\$1,000,000) limit, covering all persons the CONSULTANT is legally required to cover.

**C. Professional Liability:**

Insurance covering liability arising from any error, omission, or negligent act of the CONSULTANT, its officers, or employees with a limit of liability of not less than One Million Dollars (\$1,000,000) per claim or occurrence, and Two Million Dollars (\$2,000,000) in aggregate. If written on a Claims Made Form, CONSULTANT shall continue to provide coverage for this project for a period of two years from the date of termination or completion of this Agreement.

CONSULTANT agrees to the above Indemnification and Insurance Provisions.

\_\_\_\_\_ Initials

Exhibit B

ALTERNATIVE 2

**INDEMNIFICATION AND INSURANCE PROVISIONS**

I. INSURANCE

CONSULTANT agrees at its own expense to maintain with insurance companies policies for general liability, professional liability, comprehensive automobile liability, and worker's compensation insurance as set forth below:

A. General Liability Insurance:

The CONSULTANT shall maintain general liability insurance written on a commercial or comprehensive general liability form(s) that include(s) coverage for premises-operations, products/completed operations, contractual liability, broad-form property damage, and personal injury liability. The general liability policy shall have a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.

B. Professional Liability Insurance:

CONSULTANT shall maintain professional liability insurance, including contractual liability coverage, with policy limits of at least One Million Dollars (\$1,000,000) per claim or occurrence, Two Million Dollars (\$2,000,000) in the aggregate.

C. Comprehensive Automobile Insurance:

The CONSULTANT shall maintain automobile insurance for all owned, non-owned, and hired vehicles with a combined single limit of One Million Dollars (\$1,000,000) per occurrence or accident.

D. Worker's Compensation Insurance:

The CONSULTANT shall maintain worker's compensation insurance in an amount and form which will meet all applicable requirements of the Labor Code of the State of California, including Employers' Liability Coverage with limits of One Million Dollars (\$1,000,000) per occurrence.

E. General Conditions Relating to Insurance:

1. Additional Insureds: The WCA, RMC, and DISTRICT, its agents, appointed and elected officers, and employees shall be named as additional insureds on each policy, except workers' compensation and professional liability insurance, the CONSULTANT is required to provide under this Agreement. Such insurance shall be primary to and not contributing with, any other insurance maintained by or for the WCA and its related persons and entities.

## Exhibit M - Sample Agreement for Consultant Services with Insurance Alternatives

WCAXXXX

FYXX/XX

2. Waiver of Subrogation: Each policy obtained by the CONSULTANT to fulfill its obligations under this provision shall contain a provision waiving the right of the insurer to subrogate against the WCA and its related persons and entities for any liability covered by the policy.
3. Claims Made Policies: If any of the policies obtained by the CONSULTANT to fulfill its obligations under this provision are written on a claims-made basis, the policy shall be endorsed to provide an extended reporting period of not less than two years following the termination of this Agreement or the CONSULTANT'S work on the project referred to in this Agreement, whichever is later.
4. Occurrence Policies: If any of the policies obtained by the CONSULTANT to fulfill its obligations under this provision are written on an occurrence basis, the policies and any endorsements required by this provision (including, but not limited to, the additional insured endorsements) shall be maintained in full force and effect for a period of not less than two years following the termination of this Agreement or the CONSULTANTS' work on the project referred to in this Agreement, whichever is later.
5. Certificate of Insurance: Prior to commencing work on the project referred to in this Agreement, the CONSULTANT shall provide to the WCA certificate(s) of insurance identifying the insurers, policies, coverage, and limits of liability for the insurance the CONSULTANT is required to provide under this provision. Accompanying the certificate(s) shall be a copy of the required additional insured endorsement(s) to the policies obtained by the CONSULTANT as set forth above.
6. Notice of Cancellation or Non-renewal: Each policy shall require the insurer to give the WCA at least 30 days notice of termination of the policy by cancellation, rescission, non-renewal, or otherwise. Notice shall also be given to WCA of any material change in the terms of the coverage required to be maintained by the CONSULTANT under this provision.
7. Delivery of Notices: All certificates and notices required by this provision shall be in writing and shall be delivered to the Contract Administrator. The notices and certificates shall refer to this contract.
8. Maintenance of Insurance: The CONSULTANT shall promptly pay the premiums on all insurance policies required under this provision. The CONSULTANT further agrees that the policies shall remain in full force and effect as required by this Agreement. CONSULTANT agrees to immediately obtain replacement coverage for any policy which is terminated, canceled, non-renewed, or which has paid policy limits or upon the insolvency of the insurer issuing the policy.
9. Breach: Failure on the part of CONSULTANT to procure or maintain insurance as required by this provision shall constitute a material breach of this contract. In the event of such a breach, the WCA may, among other things, terminate this Agreement, suspend work being performed on the project by or on behalf of the CONSULTANT, or at its sole discretion, the

## Exhibit M - Sample Agreement for Consultant Services with Insurance Alternatives

WCAXXXX

FYXX/XX

WCA may obtain replacement coverage. In the event that replacement coverage is obtained, the CONSULTANT shall, upon demand, repay the WCA for the full amount of premiums paid by the WCA for the replacement coverage. In its sole discretion, the WCA may offset the cost of premiums against any monies due to the CONSULTANT from the WCA.

### II. INDEMNIFICATION:

CONSULTANT agrees to indemnify and save harmless the WCA, RMC, DISTRICT, its agents, appointed and elected officers and employees ("WCA and its related persons and entities") from any and all claims, liabilities, expenses, lawsuits, actions, or proceedings arising from, or connected with, any act or omission of the CONSULTANT, its agents, or subconsultants of any tier. The obligation to indemnify the WCA is in addition to the obligation to procure insurance as set forth in this provision.

WCA agrees that prior to demanding a defense from the CONSULTANT that it or CONSULTANT shall tender such claim to the insurers issuing the policies of insurance referred to in this provision. If the claims are not covered by any policy referred to in this provision, or the insurers refuse to defend the WCA or any of its related persons and entities, then the CONSULTANT shall be obligated to defend the WCA from any claim, suit, or proceeding in which it has been claimed or alleged that the acts or omissions of the CONSULTANT, its agents, or subconsultants of any tier were a cause of the damages claimed against the WCA and its related persons and entities in that suit, action, or proceeding.

Neither the CONSULTANT, nor its agents and subconsultants of any tier, shall be obligated to indemnify the WCA and its related persons and entities for liabilities caused by the active negligence of the WCA and its related persons and entities. However, this provision does not limit any obligation to defend or indemnify the WCA and its related persons and entities arising under the policies of insurance maintained by the CONSULTANT under this provision.

### III. SUBCONSULTANT'S INSURANCE AND INDEMNIFICATION:

CONSULTANT agrees to require that its subconsultants, subcontractors, and independent contractors maintain the same insurance coverage which it is required to maintain under this provision, including but not limited to, the obligation to name the WCA and its related persons and entities as additional insureds under each such policy.

CONSULTANT further agrees to require its subconsultants, subcontractors, and independent contractors to indemnify and defend the WCA and its related persons and entities from any and all claims, liabilities, expenses, lawsuits, actions, or proceedings arising from, or connected with, any act or omission of each such subconsultant, subcontractor, or independent contractor, its agents, or subconsultants of any tier.

Failure on the part of CONSULTANT to require its subconsultants, subcontractors, and independent contractors to provide insurance and indemnification shall constitute a material breach of this contract. In the event of such breach, the WCA may, among other



**Exhibit M - Sample Agreement for Consultant Services with Insurance Alternatives**

**WCAXXXX**

**FYXX/XX**

things, terminate this Agreement, suspend work being performed on the project by or on behalf of the CONSULTANT, or in its sole discretion, the WCA may obtain replacement insurance coverage. In the event that replacement coverage is obtained, the CONSULTANT shall, upon demand, repay the WCA for the full amount of premiums paid by the WCA for the replacement coverage. In its sole discretion, the WCA may offset the cost of premiums against any monies due to the CONSULTANT from the WCA.

CONSULTANT agrees to the above Indemnification and Insurance Provisions.

\_\_\_\_\_ Initials