

COUNTY OF MONTEREY AGREEMENT FOR PROFESSIONAL SERVICES
(MORE THAN \$100,000)* (Non-Standard Language)

This Professional Services Agreement ("Agreement") is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and: Marsh Risk and Insurance Services, (hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **SERVICES TO BE PROVIDED.** The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services in conformity with the terms of this Agreement. The services are generally described as follows:

Provide workers' compensation and casualty insurance brokerage services for the County of Monterey.

2. **PAYMENTS BY COUNTY.** County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of **\$120,000.00**.
3. **TERM OF AGREEMENT.** The term of this Agreement is from **July 1, 2012 to June 30, 2013**, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.
4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit-A Scope of Services/Payment Provisions

5. **PERFORMANCE STANDARDS.**

- 5.1 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.2 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

*Approved by County Board of Supervisors on _____.

5.3 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6. PAYMENT CONDITIONS.

6.1 CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to County. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the County may require. The Contract Administrator or his or her designee shall certify the invoice; either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.2 CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

7. TERMINATION.

7.1 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.2 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

7.3 If this Agreement is terminated, CONTRACTOR will assist the County in arranging a smooth transition process. However, CONTRACTOR'S obligation and the obligation of its affiliates to provide services to the County will cease upon the effective date of termination, unless otherwise agreed in writing.

8.0 INDEMNIFICATION. Bifurcated Indemnification

8.1 Indemnification for Professional Liability

For liability arising from professional and technical services provided under this agreement, CONTRACTOR shall indemnify, defend and hold harmless County, its governing board, directors,

officers and employees from any loss, injury, damage, expense and liability to the extent arising out of the negligence of CONTRACTOR, its employees, sub-consultants or agents.

8.2 General Indemnification Provision

For any liability, other than arising out of professional and technical services, CONTRACTOR shall indemnify, defend and hold harmless, County, its governing board, directors, officers, and employees from any loss, injury, damage, expense and liability resulting from injury to or death of any person and loss of or damage to property, or claim of such injury, death, loss or damage caused by an act or omission in the performance under this Agreement by CONTRACTOR, its employees, sub-consultants or agents, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of the County.

9.0 INSURANCE.

9.1 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Applicable endorsements executed by the insurance carrier shall accompany the certificate.

This verification of coverage shall be sent to the County's, Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such, insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.2 Qualifying Insurers:

All coverage's, except professional liability, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

9.3 Insurance Coverage Requirements:

Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a “claims-made” basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, endeavor to obtain extended reporting coverage (“tail coverage”) with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement, if reasonably available.

9.4 Other Insurance Requirements.

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Contractor shall endeavor to provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10. RECORDS AND CONFIDENTIALITY.

- 10.1 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, except in furtherance of insurance brokerage, risk consulting or other insurance-related services rendered by CONTRACTOR to County, which may include in the normal course of business the release to insurers and other financial institutions of Confidential information relevant to the underwriting and/or evaluation of County's risks and the processing of its claims. Except as set forth herein, CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

The restrictions and agreements set forth above shall not apply to any Confidential Information: (i) which at the time disclosed to or obtained by CONTRACTOR is in the public domain; (ii) which becomes part of the public domain through no act, omission or fault of CONTRACTOR; (iii) which CONTRACTOR'S records demonstrate was developed independently by CONTRACTOR or was received by CONTRACTOR from a third party which CONTRACTOR had no reason to believe had any confidentiality or fiduciary obligation to the County with respect to such information; (iv) which is required to be disclosed by law, including, without limitation, pursuant to the terms of a subpoena or other similar document; provided, however, CONTRACTOR shall, to the extent practical, give prior timely notice of such disclosure to the County to permit the County to seek a protective order, and, absent the entry of such protective order, CONTRACTOR shall disclose only such Confidential Information that CONTRACTOR is advised by its counsel must be disclosed by law; or (v) following the lapse of two years after disclosure of such information to CONTRACTOR.

- 10.2 County Records: When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement, provided, however, that CONTRACTOR may retain copies of documents which are necessary for the conduct and proper record keeping of CONTRACTOR'S business in accordance with standard operating procedures or applicable law.
- 10.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.4 Access to and Audit of Records: The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

11. **NON-DISCRIMINATION.** During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations, which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.
12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a sub grantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.
13. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement, except insurance premium taxes (including U.S. federal excise taxes), sales taxes, use taxes, surplus or excess lines and similar taxes and/or fees to federal, state or foreign regulators, boards or associations (if any) which the County agrees to pay. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability, which County may incur because of CONTRACTOR's failure to pay such taxes.
14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
<div>Steve Mauck, Risk Manager</div> <div>Name and Title</div>	<div>Keith W. Grand CPCU, ARM, Vice President</div> <div>Name and Title</div>
<div>168 West Alisal Street</div> <div>3rd Floor</div> <div>Salinas, CA 93901</div>	<div>Marsh Risk & Insurance Services</div> <div>345 California Street, Suite 1300</div> <div>San Francisco, CA 94104</div>
<div>Address</div> <div>(831) 796-3006</div>	<div>Address</div> <div>(415) 743-7571</div>
<div>Phone</div>	<div>Phone</div>

15. MISCELLANEOUS PROVISIONS.

- 15.01 Conflict of Interest.** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 15.02 Amendment.** This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver.** Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor.** The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes.** CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting.** The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns.** This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law.** The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings.** The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence.** Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement.** This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement.** The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the

effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

- 15.14 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority.** Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration.** This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.
- 15.18 Severability:** It is the intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Agreement or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified or deleted in such manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the balance of this Agreement shall not be affected thereby, the balance being construed as severable and independent.
- 15.19 Mediation and Arbitration:** In the event that a dispute arises that cannot be settled by the parties within ten (10) days, the parties agree to submit the dispute to a mediator within thirty (30) days thereafter to resolve the dispute. The mediation shall be conducted in Salinas, California. Mediation fees, in any shall be divided equally among the parties. In the event that the parties are unable to settle a dispute through mediation, the parties agree to seek arbitration pursuant to the next paragraph.

Each party to this agreement, on behalf of itself and its affiliates, agrees that any dispute, claim or controversy arising out of or relating to this Agreement or the provisions of services by CONTRACTOR or its affiliates shall be resolved by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall be conducted by a panel of three arbitrators, with each party selecting one arbitrator and the two arbitrators selecting the third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. Each of the arbitrators shall have at least fifteen years of insurance industry experience. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction.

- 15.20 Accounting/Legal/Regulatory Tax Advice:** The County acknowledges that, in performing Services, CONTRACTOR and its affiliates are not acting as a fiduciary for the County, except to the extent required by applicable law. Any reports or advice provided by CONTRACTOR should not be

relied upon as accounting, legal, regulatory or tax advice. In all instances, CONTRACTOR recommends that the County seeks its own advice on such matters from professional accounting, legal, regulatory and tax advisors.

CONTRACTOR may provide to the County information and services related to insurance regulatory and insurance tax issues relating to the County's insurance program. Any reports or advice provided by CONTRACTOR will be based on publicly available information and CONTRACTOR's experience as an insurance broker and risk consultant in dealing with such matters for other clients and should not be relied upon as accounting, regulatory or tax advice. In all instances, CONTRACTOR recommends that the County seeks its own advice on accounting, regulatory and tax matters from professional legal and tax advisers.

15.21 Modeling/Business Analytics: CONTRACTOR may provide the County with modeling and/or business analytics services, including hazard loss and catastrophe modeling, loss forecasting and triangles, adverse event simulation, scenario and portfolio risk analysis, decision mapping, risk bearing and risk retention tolerance analysis and insurance program evaluation analysis ("Modeling and Analytics"). Modeling and Analytics services will be based upon a number of assumptions, conditions and factors. If any of them or any information provided to CONTRACTOR are inaccurate or incomplete or should change, the Modeling and Analytics provided by CONTRACTOR could be materially affected. These services are subject to inherent uncertainty, and actual results may differ materially from that projected by CONTRACTOR. They are provided solely for the County's benefit, and do not constitute, and are not intended to be a substitute for, actuarial, accounting or legal advice. CONTRACTOR shall have no liability to any third party in connection with these services or to the County with regard to any services performed or provided by a third party. Except to the County's insurers in connection with the placement of coverage by CONTRACTOR, the County shall not share any of CONTRACTOR's Modeling and Analytics work product with a third party without CONTRACTOR's prior written consent.

(This section left blank intentionally)

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

By: _____
Contracts/Purchasing Officer

Date: _____

By: _____
Department Head (if applicable)

Date: _____

By: _____
Board of Supervisors (if applicable)

Date: _____

Approved as to Form¹

By: _____
County Counsel

Date: _____

Approved as to Fiscal Provisions²

By: _____
Auditor/Controller

Date: _____

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

CONTRACTOR

Marsh Risk & Insurance Services
Contractor's Business Name*

By: _____
(Signature of Chair, President, or
Vice-President)*

Name and Title
Date: _____

By: _____
(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)*

Name and Title
Date: _____

County Board of Supervisors' Agreement Number: _____.

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required, and/or when legal services are rendered

²Approval by Auditor-Controller is required

³Approval by Risk Management is necessary only if changes are made in paragraph 8 or 9