

## Attachment A

# INSURANCE, HOLD HARMLESS AND INDEMNIFICATION REQUIREMENTS FOR AGREEMENT

## INDEMNIFICATION

### §1.01 Professional Liability

- A. CONSULTANT agrees to defend, indemnify and hold harmless the public body, and the employees, officers and agents of TRFMA from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys' fees and costs, to the extent that such liabilities, damages, losses, claims, actions or proceedings are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the CONSULTANT or the employees or agents of CONSULTANT in the performance of the contract. If the insurer by which the CONSULTANT is insured against professional liability does not so defend TRFMA and the employees, officers and agents of TRFMA and the CONSULTANT is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees and costs to be paid to TRFMA by the CONSULTANT in an amount which is proportionate to the liability of the design CONSULTANT. (See: NRS 338.155)
- B. As used in this section, "agents" means those persons who are directly involved in and acting on behalf of TRFMA or CONSULTANT, as applicable, in furtherance of the contract or the public work to which the contract pertains.

### §1.02 General Liability

- A. As respects all acts or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, CONSULTANT agrees to indemnify, defend (at TRFMA'S option), and hold harmless TRFMA, its officers, agents, employees, and volunteers from and against any and all claims, demands, defense costs, or liability arising out of any acts or omissions of CONSULTANT (or Sub-contractor, if any) while acting under the terms of this agreement; excepting those which arise out of the negligence, errors, omissions, recklessness or intentional misconduct of the employees, officers or agents of TRFMA.
- B. In determining the nature of the claim against TRFMA, the incident underlying the claim shall determine the nature of the claim, notwithstanding the form of the allegations against TRFMA.

### §1.03 Limitations and Conditions.

The obligations of each indemnifying party hereunder shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section. The indemnification shall not be diminished or limited in any way to the total limits of insurance required in this contract or otherwise available to the indemnifying party. If the liability is asserted by an employee of an indemnifying party, the indemnification herein is not limited to damages, compensation or benefits payable by or for the indemnifying party under worker's

compensation acts, disability benefit acts or other employee benefit acts. Each indemnifying party shall be permitted to participate, if it chooses, in the defense of any action claiming liability, even if the indemnified party is indemnified hereunder. Either party may set off any of its rights under this subsection against any consideration it provides under this agreement. The obligations to indemnify and save harmless herein survive the expiration or termination of this Agreement.

## **GENERAL REQUIREMENTS**

§2.01 TRFMA requires that CONSULTANT purchase Industrial Insurance (Workers' Compensation), General and Auto Liability, and CONSULTANT'S Errors and Omissions Liability Insurance as described below against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work here under by CONSULTANT, its agents, representatives, employees or Sub-contractors. The cost of all such insurance shall be borne by CONSULTANT.

## **INDUSTRIAL INSURANCE (WORKERS' COMPENSATION)**

§3.01 It is understood and agreed that there shall be no Industrial Insurance coverage provided for CONSULTANT or any Sub-contractor by TRFMA. CONSULTANT agrees, as a precondition to the performance of any work under this Agreement and as a precondition to any obligation of the TRFMA to make any payment under this Agreement to provide TRFMA with a certificate issued by an insurer in accordance with NRS 616B.627 and NRS 617.210.

§3.02 If CONSULTANT is a sole proprietor, coverage for the sole proprietor must be purchased and evidence of coverage must appear on the Certificate of Insurance. Such requirement may be waived for a sole proprietor who does not use the services of any employees, subcontractors, or independent contractors and completes an Affirmation of Compliance pursuant to NRS 616B.627.

§3.03 Should CONSULTANT be self-funded for Industrial insurance, CONSULTANT shall so notify TRFMA in writing prior to the signing of any agreement. TRFMA reserves the right to approve said retentions and may request additional documentation, financial or otherwise for review prior to the signing of any agreement.

## **MINIMUM LIMITS OF INSURANCE**

§4.01 CONSULTANT shall maintain coverages and limits no less than:

- A. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit or revised to apply separately to this project or location.
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. No aggregate limit may apply.
- C. Professional Errors and Omissions Liability: \$1,000,000 per occurrence and as an annual aggregate. Premium costs incurred to increase CONSULTANT'S insurance levels to meet minimum contract limits shall be borne by the CONSULTANT at no cost to the TRFMA.
- D. CONSULTANT will maintain PROFESSIONAL liability insurance during the term of this Agreement and

for a period of three (3) years from the date of substantial completion of the project. In the event that CONSULTANT goes out of business during the term of this Agreement or the three (3) year period described above, CONSULTANT shall purchase Extended Reporting Coverage for claims arising out of CONSULTANT'S negligent acts, errors and omissions committed during the term of the Professional Liability Policy.

- E. Should TRFMA and CONSULTANT agree that higher professional Coverage limits are needed warranting a project policy, project coverage shall be purchased and the premium for limits exceeding the above amount shall be borne by TRFMA. TRFMA retains the option to purchase project insurance through CONSULTANT'S insurer or its own source.

## **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

§5.01 Any deductibles or self-insured retentions must be declared to and approved by TRFMA prior to the start of work under this Agreement. TRFMA reserves the right to request additional documentation, financial or otherwise prior to giving its approval of the deductibles and self-insured retention and prior to executing the underlying agreement. Any changes to the deductibles or self-insured retentions made during the term of this Agreement or during the term of any policy must be approved by the TRFMA Risk Manager prior to the change taking effect.

## **OTHER INSURANCE PROVISIONS**

§6.01 The policies are to contain, or be endorsed to contain, the following provisions:

- A. TRFMA, its officers, agents, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of CONSULTANT, including the insured's general supervision of CONSULTANT; products and completed operations of CONSULTANT; or premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by the Consultant. Any additional cost associated with this provision shall be the responsibility of TRFMA. The coverage shall contain no special limitations on the scope of protection afforded to TRFMA as the additional insured nor shall the rights of TRFMA as the additional insured be affected by the CONSULTANT'S duties as the insured after the accident or loss.
- B. CONSULTANT'S insurance coverage shall be primary insurance as respects TRFMA, its officers, agents, employees and volunteers. Any insurance or self-insurance maintained by TRFMA, its officers, agents, employees or volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it in any way.
- C. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to TRFMA, its officers, agents, employees or volunteers.
- D. CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- E. CONSULTANT'S insurance coverage shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to TRFMA except for nonpayment of premium.

## ACCEPTABILITY OF INSURERS

§7.01 Insurance is to be placed with insurers with a Best's rating of no less than A-: VII. TRFMA may accept coverage with carriers having lower Best's ratings upon review of financial information concerning CONSULTANT and insurance carrier. TRFMA reserves the right to require that the CONSULTANT'S insurer be a licensed and admitted insurer in the State of Nevada, or on the Insurance Commissioner's approved but not admitted list.

## VERIFICATION OF COVERAGE

§8.01 CONSULTANT shall furnish TRFMA with certificates of insurance and with original endorsements affecting coverage required by this exhibit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms approved by TRFMA. **All certificates and endorsements are to be addressed to TRFMA and be received and approved by TRFMA before work commences.** TRFMA reserves the right to require complete, certified copies of all required insurance policies, at any time.

## SUB-CONTRACTORS

§9.01 CONSULTANT shall include all Sub-contractors as insureds under its policies or furnish separate certificates and endorsements for each Sub-contractor. Sub-CONSULTANT shall be subject to all of the requirements stated herein.

## MISCELLANEOUS CONDITIONS

§10.01 CONSULTANT shall be responsible for and remedy all damage or loss to any property, including property of TRFMA, caused in whole or in part by CONSULTANT, any Sub-CONSULTANT, or anyone employed, directed or supervised by CONSULTANT.

§10.02 Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payment of damages to persons or property resulting from its operations or the operations of any Sub-contractors under it.

§10.03 In addition to any other remedies TRFMA may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, TRFMA may, at its sole option:

- A. Order CONSULTANT to stop work under this Agreement and/or withhold any payments which become due CONSULTANT here under until CONSULTANT demonstrates compliance with the requirements hereof;
- B. Purchase such insurance to cover any risk for which TRFMA may be liable through the operations of Consultant under the Agreement and deduct or retain the amount of the premiums for such insurance from any sums due under the Agreement.
- C. Terminate the Agreement.