

**EXHIBIT D**

**Indemnity and Insurance**

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#### 1. INDEMNITY

Hart InterCivic, Inc. (hereinafter "Hart") shall indemnify, defend, and hold harmless the County of Boulder, Colorado (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage asserted by third parties to the extent proximately caused by the negligence of Hart and/or its agents, employees or sub-contractors, in the performance of this Agreement, excepting only loss, injury or damage caused by the sole or joint negligence or willful misconduct of personnel employed by the County. Hart shall reimburse the County for all costs, reasonable attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement. Notwithstanding the foregoing, under no circumstances will Hart be obligated to indemnify, defend and hold harmless County or to reimburse County for any expenses unless: (a) County gives Hart prompt written notice of all claims subject to such indemnity, (b) County permits Hart to control the defense and settlement of all such claims with attorneys reasonably acceptable to County, and (c) County reasonably cooperates with Hart in the settlement and defense of all such claims. Under no circumstances will Hart be required to indemnify County for a settlement entered into by County without Hart's prior written consent.

Nothing herein is intended as a limitation under the *Colorado Governmental Immunity Act*.

#### 2. INSURANCE

Without limiting Hart's indemnification of the County, Hart shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

##### A. Evidence of Coverage

Prior to commencement of this Agreement, Hart shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by Hart upon request of an authorized agent of the County.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. Hart shall not receive a Notice to Proceed with the work under the 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 Hart.

##### B. Qualifying Insurers

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

##### C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without thirty (30) days' prior written notice of such cancellation or change being delivered to the County or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage that provides limits as follows:

a. Each occurrence:	\$1,000,000
b. General aggregate:	\$2,000,000
c. Products/Completed Operations aggregate:	\$2,000,000
d. Personal Injury:	\$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Personal Injury liability
- f. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

"County of Boulder, and members of the Board of County Commissioners of the County of Boulder, and the officers, agents, and employees of the County of Boulder, individually and collectively, as additional insureds."

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Boulder, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Hart or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement).

For bodily injury (including death) and property damage which provides total limits of not less than one (1) million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory Colorado Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

#### E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Hart and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Hart pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be nullified by self-insurance on the part of Hart. However, this shall not in any way limit liabilities assumed by Hart under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Hart's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under this Agreement be sublet, Hart shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Hart may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Hart in the event of material noncompliance with the insurance requirements outlined above.

#### F. Fidelity Bonds (Required only if Hart will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Hart will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Hart will notify County immediately, and County may withhold further payment to Hart until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.