

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

Dep't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

Reviewed by
CIP TEAM
Christopher Hans

FORM APPROVED COUNTY COUNSEL
BY: Marshall Victor DATE: 10/8/09
MARSHAL VICTOR

Departmental Concurrence

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

619



FROM: Economic Development Agency and Riverside County Information Technology

SUBMITTAL DATE:
September 3, 2009

SUBJECT: Blythe Riverside County Information Technology Communications Facility

RECOMMENDED MOTION: That the Board of Supervisors:

1. Ratify the attached architectural and engineering services agreement between the County of Riverside and Holt Architects of Rancho Mirage, California, in the amount of \$36,480, plus a reimbursable allowance not to exceed \$500, and authorize the Chairman to execute the agreement on behalf of the County; and
2. Authorize the Assistant County Executive Officer/EDA to administer the agreement in accordance with applicable Board policies.

BACKGROUND: (Commences on Page 2)

Matthew Frymire
Matthew Frymire
Chief Information Officer

Robert Field
Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 36,980	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	09/10

SOURCE OF FUNDS: RCIT Departmental Budget	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY: Jennifer L. Sargent
County Executive Office Signature

10/8/09 10:58 AM
COUNTY OF RIVERSIDE

BACKGROUND:

The County of Riverside is proposing to construct a new Riverside County Information Technology (RCIT) Communications Facility in Blythe. The proposed project would be constructed on County owned property. The new facility will relocate RCIT technician services to create space for the new PSEC building and tower in Blythe. The project will include construction of a modular above-ground building, service bay and office area.

On December 18, 2007, the Board of Supervisors approved a pre-qualified list of architectural firms to be retained on an as-needed basis. Economic Development Agency (EDA) has selected Holt Architects from the pre-qualified list for the design, bidding assistance, and construction administration of the RCIT Communications Facility. Holt Architects was selected to provide these services due to their experience with projects of similar size and scope. County Counsel has approved the agreement as to legal form.

All associated costs pertaining to the agreement will be fully funded by RCIT Departmental Budget, thus no additional Net County Cost will be incurred as a result of this agreement.



**OWNER/ARCHITECT AGREEMENT
BETWEEN COUNTY OF RIVERSIDE**

AND

HOLT ARCHITECTS

**BLYTHE RCIT COMMUNICATIONS FACILITY
FM08740003924**

AGREEMENT FOR ARCHITECTURAL SERVICES

COUNTY OF RIVERSIDE, a political subdivision of the State of California, herein referred to as the "County", and Holt Architects, duly licensed as an Architect and/or Architectural Professional Corporation under the laws of the State of California, herein called "Architect", mutually agree as follows, effective as of July 9, 2009:

- I. DESCRIPTION. The Architect shall render architectural and engineering services for all identified phases of the project to the County, for which the County shall pay the Architect, all as hereinafter provided, with relation to design and construction, under contract to be let on competitive bidding, of building and improvements, herein called "project", described and generally located as follows: FM08740003924 RCIT Communication Facility, (APNs 845-122-017 and 845-122-018) 249 N. Spring St, Blythe, CA
- II. SCOPE OF WORK. The Architect shall perform all services and other activities necessary to design and prepare construction documents ready to advertise and receive bids for the project in accordance with the terms of this Agreement and as outlined in the attached Exhibit "A", incorporated herein and by this reference made part hereof.
- III. ARCHITECT'S SERVICES. The Architect shall render the following services and related services as stipulated in Exhibit "A".
 - A. PROGRAMMING VERIFICATION: Including developing from provided information a list of space allocations and room/outdoor area(s) space data sheets. Work under this phase to be completed within two weeks of written authorization to proceed.
 - B. SCHEMATIC DESIGN: Consult with representatives of the County, examine site and surroundings, ascertain presently proposed and probable future functions and requirements of the project; prepare schematic design studies incorporating the program requirements including site plans, floor plans, elevations, sections and other drawings necessary to describe the project. Prepare an itemized preliminary budget for the project, including a construction cost estimate, estimates for essential or optional fixtures and improvements recommended for separate purchase or installation, including but not limited to such items as floor coverings, window equipment, and all items of cost necessary to the completion but not to be covered by construction contract. Prepare outline specifications in sufficient detail to permit an analysis of the proposed construction and building systems specified and a tabulation of both gross and assignable floor areas with a comparison to the initial program requirements. Submit schematic drawings and an estimated construction cost; make necessary revisions as required to meet the financial limitations and other needs of the County; submit a preliminary schedule for completion of the subsequent phases. Design studies shall accommodate County's space standards and systems furniture needs as required. Work under this phase to be completed within four weeks of written authorization to proceed.

- C. DESIGN DEVELOPMENT: Develop from the schematic analysis, as approved, and submit to the County preliminary site plans, floor plans, elevations, cross-sections and other necessary drawings and specifications, to fix and illustrate the size and character of the project, including applicable essentials as to kind and quality of materials, type of structure, mechanical, electrical and sanitary systems, interior design and other fundamental information; present for the approval of the County a construction cost estimate, a revised schedule for completion of subsequent phases, apply for and obtain any necessary, preliminary approvals of public agencies. Work under this phase to be completed within four weeks of written authorization to proceed.
- D. CONSTRUCTION CONTRACT DOCUMENTS: Prepare detailed construction contract drawings, all related specifications and construction cost estimate; prepare other necessary contract documents, using forms provided by the County, to include general conditions and supplementary general conditions, instructions to bidders, form of proposal, agreement, bonds, and notice inviting bids. Assist County in applying for those permits and approvals typically required by law for projects similar to the one for which Architect services are being engaged. Complete final contract documents and submit them for approval, ready to invite bids, including any recommended alternate bid provisions and period for construction, accompanied in writing with any recommended adjustments in estimated contract price and other budget items and schedule for completion of subsequent phases; recommend time until receipt of bids, and for completion. Work under this phase to be completed within six weeks of written authorization to proceed.
- E. BIDDING: Solicit bids by direct communication with contractors, by means of usual trade publications and through construction bid plan rooms. Reproduce and issue drawings, specifications and other contract documents for bidding purposes; prepare and issue to all prospective bidders any necessary addenda not later than a reasonable period before the time fixed to receive bids, and submit the same for approval of the County before award of the contract; consult with and make specific recommendations to County concerning responsibility of bidders and proposed subcontractors and concerning acceptance or rejection of bids and alternate bids; thereafter give timely notice to County to issue the "Notice to Proceed" to the contractor to commence construction; promptly investigate requests of contractor for substitution of "equals" and make reports and recommendations to County.
- F. CONSTRUCTION: Make periodic visits to the project and provide construction administration services and observation of the work to assist securing completion for general conformity with the contract documents including drawings and specifications; without guaranteeing performance by contractors, observe compliance with contract requirements by contractors, and promptly notify County of uncorrected noncompliance, substantial delays and observed deviations from requirements of the contract; perform functions required of the Architect by the terms of this Agreement for Architectural Services; coordinate and cooperate

with the Clerk of the Works or inspector provided by the County; interpret drawings and specifications; review and act on reports of results of materials and systems testing arranged for and paid by the County or contractor as provided in the contract documents; review and accept (or reject) all submittals by the contractor required by the contract documents including shop drawings, products, and data samples for conformance with design concept and contract documents; prepare a color and finish schedule and all revisions thereof; approve material samples for color and finish; recognize the need for, negotiate, prepare and seek timely approval of change orders, specifying therein what, if any, additional time for completion is to be allowed on account thereof; review contractor's applications for payment and recommend certificates for payment, with full or partial withholding where circumstances so indicate; at completion stage make thorough and complete visual observations of exposed "to" view elements, report observed deficiencies and ascertain substantial compliance; thereupon, and not before, promptly report to County the fact of completion accompanied by notice of completion prepared for execution of County on form supplied by or acceptable to County's legal adviser; prepare and make all reports as required for local, state and federal agencies and obtain necessary approvals or other clearances thereon; file with County any required written warranties submitted by the contractor; based on Architect's observations during construction, review and report opinion of accuracy and completeness of record drawings as such pertains to information that Architect has knowledge of such as Change Orders, Addendum, Interpretations or Clarifications prepared by Architect. and file with County the record drawings, and specifications prepared by the contractor and for which the contractor assumes sole responsibility for the accuracy and completeness thereof. The Architect shall not have the authority to stop the construction work for any reason. The Architect shall not have control or charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, fabrication, procurement, shipment, delivery or installation, or for safety precautions and programs in connection with the Work, for the acts or omissions of the contractors, subcontractors, suppliers, or any other persons performing any of the work, or for the failure of any of them to carry out the Work in accordance with the contract documents.

- G. GUARANTY PERIOD: Consult with County's representatives and assist County in negotiations with contractors and subcontractors with reference to remedying defects of construction or unsatisfactory operation of the complete project or any of its parts, for a period of one year after acceptance of the project.
- H. EXTRA WORK: Extra work shall be performed only when requested or approved by the County in writing, after written notice from the Architect as to the estimated cost thereof. Extra work shall include, but not be limited to:
1. Prepare planning surveys and special analyses of the owner's needs, In addition to the base requirements of the contract, to clarify requirements of the project when requested by the owner.

2. Prepare measured drawings of existing construction when required for planning additions or alterations thereto.
3. Revising previously approved drawings or specifications to accomplish changes ordered by the County.
4. Consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services as may be required in connection with the replacement of such work.
5. Arranging for the work to proceed should the contractor default due to delinquency or insolvency.
6. Providing contract administration and observation of construction should the original construction contract time be exceeded by 60 days through no fault of the Architect.
7. Conducting an observation of the project prior to expiration of the guarantee period and reporting observed discrepancies under guarantees provided by the construction contract, if requested by the owner.
8. Preparing drawings and/or specifications for correction of defects of construction discovered after completion, or letting contracts or observation of construction thereunder, preparing for or participating in litigation arising out of the construction contract or defects of construction, whether before or after completion, or the enforcement of guarantees or warranties.
9. Preparation of drawing for remodeling of existing facilities, if applicable.

IV. ARCHITECT'S COMPENSATION

A. Determination of Amount

1. For the services hereinabove required the County shall pay to the Architect, in the manner hereinafter provided, a lump sum fee of thirty-six thousand four hundred and eighty (\$36,480) dollars, and shall be paid as provided in paragraph IV.C. Payment.
2. The Construction Contract Budget (which includes trade contracts and general conditions has been determined by the County and until revised by the County shall be deemed to be two hundred thirty thousand six hundred (\$230,600) dollars. The Architect's compensation in Section IV, A, I

above, shall include design services necessary for the joint development of the information technology (IT) systems with the County's Information Technology Department.

3. If the accepted bid amount is higher or lower than the construction cost stipulated above, the Architect's fee will not be changed, except for increases in scope of work which will be compensated per terms outlined below in IV.B. Additional Services.
4. Authorized reimbursable expenses shall be paid at consultant's cost, plus 10%. Authorized reimbursable expenses are as follows, and shall not exceed: \$500.
 - a. Expenses for travel outside the Riverside County area provided, however, that such travel is authorized in advance by the County.
 - b. Expenses for postage of drawings and specifications.
 - c. Direct cost of models, renderings, prints, photographs or other reproduction authorized by the County.

B. Additional Services

1. Payments for additional services authorized by the Board shall be made upon acceptance of said services by Facilities Management Director and in accordance with one of the following as determined by the Facilities Management Director:
 - a. By negotiation between County and Architect.
 - b. By Hourly rates for time expended by Architect's personnel in accordance with Hourly Rate Schedule attached to this Agreement as Exhibit "B".
 - c. The Architect shall not be entitled to additional fee for deductive change orders nor shall his fee be reduced due to deductive change orders.
2. The compensation herein provided shall be full payment to the Architect for all services rendered by him and all persons engaged or employed by him in the performance of this agreement, and no additional payment or reimbursement shall be made therefore or for any travel or other expenses incurred by the Architect or such persons, except as may be specifically provided in writing between the parties.
3. No deduction from the Architect's compensation shall be made on account of any sum withheld from a contractor.

C. Payment

1. The County shall pay the Architect, upon his itemized statement (with backup documentation upon request), for completed and approved services under this agreement in the various phases. (See Exhibit "A".) The Architect shall be entitled to invoice monthly based on percentage complete of work.

- a. Program Verification -----\$0.00
- b. Schematic Design -----\$5,472.00
- c. Design Development-----\$7,296.00
- d. Construction Documents 50% of lump sum. -----\$7,296.00
- e. Construction Documents 100% of lump sum. ----- \$7,296.00
- f. Bidding-----\$1,824.00
- g. Construction Administration-----\$7,296.00
 Invoiced in equal monthly installments from the start of construction.
- h. Close out-----\$0.00
 Invoiced upon acceptance and approval of the following:

Punch list development and monitoring of completion of punch list items; collection of warranties; collection of operation and maintenance manuals; operations and security walk through; staff instructions/training (if desired); and preparation of record drawings (As-Builts)

i. For extra work authorized by the County, the compensation shall be payable during the month following that in which the work was performed and approved by the County unless other specific methods of payment have been agreed upon between the parties.

2. County agrees that timely payment is a material part of the consideration of this agreement. The County shall review submitted invoices and within 14 calendar days of receipt notify Architect in writing of questions or disputed amounts. Within 30 calendar days from the day the County receives an invoice, the County shall make payment of all amounts due, which have not

been previously identified as a disputed amount and remain unresolved.

V. DUTIES OF ARCHITECT

- A. Upon execution hereof, the Architect shall proceed with the work in accordance with Exhibit "A", each phase shall be approved in writing by the County and a Notice to Proceed issued prior to commencing subsequent phases.
- B. The Architect's work on each phase shall be performed in such manner and form as will to the extent within the control of the Architect receive approval of any local, state or federal agency having jurisdiction to approve the same, and he shall furnish all architectural and engineering information and data necessary to meet the requirements of such agency or agencies in order to secure approval to construct the project or for financial aid in connection therewith, if requested to do so by the County. However, the Architect shall not be required to sign any documents, no matter by whom requested, that would result in the Architect having to certify, guarantee or warrant the existence of conditions whose existence the Architect cannot ascertain.
- C. If the lowest responsible construction bid for the project exceeds the adjusted estimated cost of construction by 10%, the Architect shall, upon request from the County, revise the construction documents, without cost to the County, so as to bring the cost of the project within said adjusted cost estimate without program alteration, and shall prepare the necessary documents to invite further bids, and in a like manner shall furnish revised construction documents in the same manner initially required herein. However, if the County elects to award a construction contract even though the responsible low bid exceeds the adjusted estimated cost of construction, the Architect's fee shall not be increased. If bidding has not commenced within three months after the Architect submits the proposed contract documents to the County, any of the estimated cost of construction shall be adjusted to reflect any change in the general level of prices which may have occurred in the industry between date of submission of the contract documents to the County and the date on which proposals are sought.
- D. The Architect shall obtain employ or engage all engineers, consultants or other individuals or firm necessary to enable him to perform the services under this agreement through all phases of the project, and shall be responsible for their compensation, including but not limited to structural engineers, mechanical engineers, electrical engineers, civil engineers, landscape architects, and interior design consultants.
- E. The Architect shall obtain and maintain during the term of performance of this Agreement workers' compensation insurance in accordance with statutory requirements.
- F. The Architect shall deal directly with the duly appointed Project Manager from

Facilities Management in all matters pertaining to the project construction.

VI. DUTIES OF THE OWNER

- A. The County shall make available to the Architect all information which may be requested in order to perform the services required of him under this agreement, including space requirements, space standards, functions and uses proposed for all proposed occupancies. The Architect may rely upon the accuracy and completeness of all information provided by the County including, but not limited to surveys, tests, and reports. The Architect shall advise the County of any known errors, inconsistencies, or problems they may observe in such information.
- B. The County shall furnish the Architect with an engineering site survey and topography of the property upon which the project is to be constructed. Such survey shall be prepared by a licensed surveyor or registered civil engineer and shall indicate existing structures, land features, improvements, public utility and public service installations, elevations, boundary dimensions, easements and other matters usual to such surveys, and such other items as may be requested by the Architect. The survey shall be provided as soon as possible after award of the contract.
- C. The County shall pay all fees required by any state or federal agency for filing and checking any of the work of the Architect or Architect's consultants. The County shall also pay such fees as shall be necessary to secure building and related permits for the work from governmental agencies.
- D. During such portion of the construction period as the County deems necessary, the County shall provide and compensate the Clerk of the Works or other building inspectors, who shall provide code interpretation and compliance with the construction documents inspection.
- E. The County shall promptly consider and act upon such written requests or recommendations of the Architect as may be necessary to proceed with the progress of construction.
- F. The Architect shall provide plans for systems furniture when the furniture is included in the project. The County shall engage a systems furniture consultant to work directly with the Architect to develop floor plans, including requirements for electric power, lighting and communication systems in the project.
- G. The County agrees that the General Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the agreement between the County and the General Contractor. The County also agrees that the County, Architect and Architect's consultants shall be indemnified and named as

additional insured under the General Contractor's General Liability Insurance Policy.

- H. If the County's Project Manager observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the County to the Architect.

VII. DOCUMENTS

- A. The Owner acknowledges that the Architect's reports, drawings, specifications, field data, field notes, laboratory test data, calculations, estimates and other similar documents are instruments of professional service, not products. Although ownership of such documents normally is retained by the Architect they nonetheless shall in this instance become upon their creation the property of the County whether the Project is constructed or not. The Architect will however retain the copyright to such documents. The County may use the design documents and the designs depicted in them, without the Architect's consent, in connection with the Project, or other County Projects, including, without limitation, future additions, alterations, connections, repairs, information, reference, use or occupancy of the Project(s). Any reuse of the documents by County without the written consent of the Architect shall be at County's sole risk and without liability or legal exposure to the Architect, and County shall indemnify, defend and hold the Architect harmless from any claims or losses arising out of such use of the design documents by the County.
- B. Upon completion of each of the Phases described in Exhibit "A", the Architect shall furnish to the County four (4) copies of all documents for that phase. Upon approval thereof by the County, the Architect shall furnish one reproducible set along with a CD in ACAD of construction documents.

VIII. INSURANCE – Without limiting or diminishing ARCHITECT'S obligation to indemnify and hold the COUNTY harmless, ARCHITECT shall procure and maintain, or cause to be maintained at its sole cost and expense, the following insurance coverage during the term of this Agreement:

a. **Workers' Compensation:**

If ARCHITECT has employees as defined by the State of California, ARCHITECT shall maintain Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of the County and, if applicable, provide a Borrowed Servant/Alternate Employer Endorsement.

b. **Commercial General Liability:**

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products/completed operations if applicable, personal and advertising injury covering claims that arise from or out of ARCHITECT'S operations, use and management of the premises, or the performance of its obligations hereunder. Policy shall name, by Policy

Endorsement, the County of Riverside its Agencies, Districts, Departments and Special Districts, their respective Directors, Officers, Board of Supervisors, employees, elected and appointed officials as Additional Insureds. Policy limits shall not be less than \$2,000,000 per occurrence combined single limits. If Policy contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

c. **Vehicle Liability:**

If any vehicle or mobile equipment is used in the performance of the obligations under this Agreement, ARCHITECT shall maintain liability insurance for all owned, non-owned and hired vehicles in an amount not less than \$1,000,000 per occurrence combined single limit. Policy shall name, by Policy Endorsement, the County of Riverside its Agencies, Districts, Departments and Special Districts, their respective Directors, Officers, Board of Supervisors, employees, elected and appointed officials as Additional Insureds. If Policy contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall be Endorsed to name the County as Additional Insured.

d. **Property (Physical Damage):**

All-Risk personal property insurance coverage for the full replacement value of all ARCHITECT'S equipment, systems, structures and improvements/alterations if any including property in the ARCHITECT'S Care, Custody, and Control used on County premises, or used in any way connected with the accomplishment of the work or performance of services under this Agreement.

e. **Professional Liability:**

ARCHITECT shall maintain Professional Liability Insurance providing coverage for performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If ARCHITECT'S Professional Liability Insurance is written on a claims-made basis (Project Specific) rather than an occurrence basis, such insurance shall continue through the term of this Agreement. Upon termination of this Agreement, or the expiration or cancellation of the claims made insurance policy, ARCHITECT shall purchase at its sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage), or 2) Prior Dates Coverage from a new insurer

with a retroactive date back to the date of, or prior to, the inception of this Agreement, or 3) demonstrate through Certificates of Insurance that ARCHITECT has maintained continuous coverage with the same or original insurer. Coverage provided under items 1), 2), or 3) will continue for a period of five (5) years beyond the termination of this Agreement.

f. **General Insurance Provisions - All lines:**

- (1) Any insurance carrier providing insurance coverage hereunder shall be admitted or approved to the State of California unless waived, in writing, by the County Risk Manager. Carrier(s) shall have an A.M. BEST rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the carrier(s), and such deductibles and retentions shall have the prior written consent from the County Risk Manager.
- (2) Cause its insurance carrier(s) to furnish the County of Riverside with a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any, cancellation, expiration or reduction of such insurance. In the event of, cancellation, expiration or reduction, this Agreement may be terminated by the County forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements evidencing coverage set forth herein and the insurance required herein is in full force and effect. **ARCHITECT shall not commence operations under this Agreement until the County of Riverside has been furnished original Certificate(s) of Insurance and all required endorsements. Upon County's request, ARCHITECT shall make available for inspection copies of ARCHITECT's insurance policies.**
- (3) It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary, and the County's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- (4) ARCHITECT shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

IX. INDEMNITY AND HOLD HARMLESS – The ARCHITECT agrees to and shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Departments and Special Districts, their respective directors, officers, Board of Supervisors, elected and appointed officials and employees (hereinafter individually and collectively referred to as "Indemnites") from all liability, including, but not limited to loss, suits, claims, demands, actions, or proceedings to the extent caused by any alleged or actual negligence, recklessness, willful

misconduct, error or omission of ARCHITECT, its directors, officers, partners, employees, agents or representatives or any person or organization for whom ARCHITECT is responsible, arising out of or from the performance of services under this Agreement.

As respects each and every indemnification herein ARCHITECT shall defend and pay, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, and defense and settlements or awards against the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials and employees.

With respect to any action or claim subject to indemnification herein by ARCHITECT, ARCHITECT shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes ARCHITECT'S indemnification to Indemnitees as set forth herein.

ARCHITECT'S obligation hereunder shall be satisfied when ARCHITECT has provided to Indemnitees the appropriate form of dismissal relieving Indemnitees from any liability for the action or claim involved.

The specified insurance limits required in this Agreement shall in no way limit or circumscribe ARCHITECT'S obligations to indemnify and hold harmless Indemnitees from third party claims.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the ARCHITECT from indemnifying the COUNTY to the fullest extent allowed by law.

X. TERMINATION

A. The County shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice. Upon receipt of notice, the Architect shall immediately discontinue work and cancel all outstanding commitments for material, equipment or subcontractors that may be cancelled without undue cost. Architect shall notify County of commitments that cannot be cancelled without undue cost and County shall have the right to determine the best course of action. Subject to compliance with the foregoing and all other provisions of this Agreement, County shall pay to Architect reasonable and proper termination charges which shall not include anticipated profit. County shall be entitled to all material specifically accumulated for the work and included in the above costs. The County shall further compensate Architect for actual services performed in accordance with this Agreement, through the date of termination. Architect shall provide documentation deemed adequate by County to show the services actually completed and costs incurred by Architect.

B. This Agreement may be terminated by either the Architect or the County upon

seven (7) days written notice to the other party, in the event of substantial failure of performance by the other party or upon County's election to abandon or indefinitely postpone the project. Upon the giving of a notice to terminate by either Party, the other Party shall have the opportunity to cure the deficiency giving rise to the notice within such seven (7) day period. In the event the County elects to abandon or indefinitely postpone the project and gives such seven (7) day notice to Architect of termination, the County shall make a lump sum payment for all services performed to date of written notice a total amount which bears the same ratio to the total maximum fee otherwise payable under this Agreement as the services actually performed bear to the total services necessary for performance of this Agreement.

- C. Notwithstanding any of the provisions of this Agreement, the Architect's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon the Architect's bankruptcy, or in the event of fraud, dishonesty, or willful or material breach of this Agreement by the Architect or at County's election, in the event of the Architect's unwillingness or inability for any reason whatsoever to perform the duties hereunder. In such event, the Architect shall be entitled to no further compensation under this agreement except for services actually rendered, it being the intent that the Architect shall be paid as specified only during such period that the Architect shall, in fact, perform the duties hereunder.

XI. MISCELLANEOUS PROVISIONS

- A. Unless otherwise required by the County prior to commencement of the work in, the construction documents shall be prepared so that all of the work on the project will be executed under a single construction contract, but the County may request the Architect to provide for one or more alternate proposals whereby a reasonably severable portion or portions of the project may be bid as additive alternates in the event the County requests that any portion of the work be bid as additive alternates. The Architect shall not be entitled to any extra compensation for such work. If the additive alternates are let as separate construction contracts, The County and the Architect shall agree on the nature and extent thereof and additional services, if any, will be authorized the Architect in connection therewith.
- B. Unless otherwise specified by the County, soil and materials testing, usual and necessary for the proper performance of the Architect's work or the adequate construction of the project, shall be obtained by the County.
- C. The Architect shall consult with the County's legal adviser on legal matters affecting the County in relation to the drawings, specifications and contract documents and the relationship between County and contractor when requested by the County. The Architect shall submit for the County's legal advisers review, and correction if required, for approval as to legality or form, the contract documents and specifications (but not the drawings in the absence of a request therefor or of any specific legal problem therein), addenda (other than for correction of minor errors or

minor omissions in the drawings or specifications), change orders and other documents which may have legal implications or legal consequences to the County. Such documents shall be submitted in time reasonably to permit their review and advice to the County before the County shall act thereon, and in sufficient quantity to permit said legal adviser to retain one copy thereof if he so desires.

- D. The Facilities Management Director, or a designated assistant, shall represent the County initially in any informal discussions or conferences with the Architect preliminary to or not requiring the action of the County's governing body, unless the County shall designate some other person or persons for that purpose. A written summary of conclusions reached at any such conference may be required of the Architect by the County's representative.
- E. This agreement shall not be assignable by the Architect as to any rights or duties thereunder without the prior written consent of the County, and any assignment attempted in violation of this provision, or any involuntary assignment, shall give the County cause to terminate and cancel this agreement the same as for a breach thereof. In other respects this agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties.
- F. Any notice or communication under this agreement shall be transmitted to the Facilities Management Director or a designated assistant and to the Architect at the address shown under their signature, subject to change at any time by written notice form either party to the other.
- G. Release of Information to the Public: The Architect shall consider all information regarding the Project as confidential information. Any request for information from others shall be directed to the County.
- H. The following shall apply to all construction change orders:
 - 1. Work performed by the Architect or his consultants to clarify or explain a detail or condition in the drawing and/or specifications, the work will be considered an element of Architect's services and no payment for extra services will be made.
 - 2. For other change orders required by the County, the Architect shall be paid in accordance with the provisions of section for Extra Work for the cost for the services performed, regardless of an additive or deductive price for the change order.
- I. Construction Period Site Visits/Communication:
 - 1. It is the intention of the County to schedule weekly job-site visits. There may be occasions when fewer will suffice. There may be occasions where more will be required. The Architect agrees either to be in attendance at

these meetings, or alternatively to have his architectural consultant and/or those other consultants he considers to be appropriate in attendance.

2. The Architect shall be allowed the option of providing on site services in lieu of in-office services for the express purpose of expediting the interpretation of drawings, processing of shop drawings and processing of clarification requests. The additional on-site time shall not be interpreted by the parties as any increased responsibility for actual construction observation.
- J. The laws of the State of California will govern the validity of this Agreement, its interpretation and performance. Litigation arising from this Agreement shall be brought in California Courts. The prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees and other related expenses.
- K. It is acknowledged by both parties that the Architect's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event the Architect or any other party encounters asbestos or hazardous or toxic materials at the jobsite, or should it become known in any way that such materials may be present at the jobsite or any adjacent areas that may affect the performance of the Architect's services, the Architect may, at the Architect's option and without liability for consequential or any other damages, suspend performance of services on the project until the County retains appropriate specialist consultants or contractors to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrant that the jobsite is in full compliance with applicable laws and regulations.
- L. Notwithstanding anything in this Agreement, the Architect, including the Architect's subconsultants, if any, shall not be responsible hereunder for any delay, default or nonperformance of this Agreement, if and to the extent that such delay, default or nonperformance is caused by an act of God, weather, accident, labor strike, fire, explosion, riot, war, rebellion, terrorist activity, sabotage, flood, epidemic, act of government authority in its sovereign capacity, labor, material, equipment or supply shortage, or any other cause beyond the reasonable control of such party.

IN WITNESS HEREOF, the parties hereto have executed this agreement on

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL

Charles Walters

Deputy Director
Design & Construction Division
Facilities Management
Address: 3133 Mission Inn Ave.
Riverside, CA 92507

ATTEST:
Nancy Romero
Clerk of the Board

By _____
Deputy

(SEAL)

OWNER
COUNTY OF RIVERSIDE

Chairperson, Board of Supervisors

ARCHITECT
Holt Architects

By *Christopher M. Holt*
Title PRESIDENT

By *J. E. Holt*
Title VICE PRESIDENT

Address 70225 Hwy 111, STE D
Rancho Mirage, CA 92270

Phone No. 760 328 5280

Dated _____

FORM APPROVED COUNTY COUNSEL

BY: *M. Victor* 10/8/09
MARSHAL L. VICTOR DATE