

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

349



**FROM:** Economic Development Agency

**SUBMITTAL DATE:**  
January 30, 2014

**SUBJECT:** East County Detention Center – Approval of Construction Management Services, District 4, [\$6,472,045], Bond Proceeds

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Ratify the attached professional services agreement for construction management services between the County of Riverside and Vanir Construction Management, Inc. (Vanir) of Sacramento, California, in the amount of \$6,472,045 and authorize the Chairman of the Board 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.

FISCAL PROCEDURES APPROVED  
PAUL ANGULO, CPA, AUDITOR-CONTROLLER  
BY: [Signature] 1/30/14

**BACKGROUND:**  
Summary

(Commences on Page 2)

[Signature]  
Robert Field  
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
<b>COST</b>	\$ 1,300,000	\$ 1,800,000	\$ 6,472,045	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0	

**SOURCE OF FUNDS:** Bond Proceeds  
Budget Adjustment: No  
For Fiscal Year: 2013/14

**C.E.O. RECOMMENDATION:**

Reviewed by  
CIP TEAM

APPROVE  
BY: [Signature]  
Rohini Dasika

County Executive Office Signature [Signature] 2/4/2014

**MINUTES OF THE BOARD OF SUPERVISORS**

FORM APPROVED COUNTY COUNSEL  
DATE 1/16/14  
BY: [Signature]  
MARSHAL VICTOR  
Departmental Concurrence

By: [Signature]  
Stanley L. Sniff, Jr.  
Sheriff – Coroner - PA

- A-30
- 4/5 Vote
- Positions Added
- Change Order

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

Economic Development Agency

**FORM 11:** East County Detention Center – Approval of Construction Management Services, District 4, [\$6,472,045], Bond Proceeds

**DATE:** January 30, 2014

Page 2 of 3

**BACKGROUND:**

**Summary**

On January 26, 2013, the Economic Development Agency (EDA) advertised a Request for Qualifications (RFQ) regarding the selection of a firm to provide construction management services for the East County Detention Center project. The RFQ was distributed for the purpose of selecting the most qualified firm to provide construction management services for the proposed project.

Per Board Policy H-7 and the Government Code, a selection committee was formed that included representatives from EDA and the Sheriff Department to review each firm's qualifications. After reviewing all of the submitted Statements of Qualifications, Vanir Construction Management, Inc. was selected as the firm best suited to provide the services.

In the scope of this construction management agreement, Vanir will be providing construction management services for the East County Detention Center (ECDC) project, ECDC Site Preparation and Demolition, ECDC Parking Structure, Indio Larson Justice Center Courtrooms Remodel, and the East County Emergency Operations Center project. To date Vanir has provided initial services to keep ECDC and its associated projects on schedule.

In order to fulfill the conditions of the funding awarded by the state and bring this project through design award and construction, it is necessary for the project team to incur costs such as project management, environmental document preparation, legal fees, real estate services, and miscellaneous consultant fees. These costs are to be reimbursed by the General Fund to be reimbursed by Bond Proceeds.

**Impact on Residents and Businesses**

Approval of the construction management contract will position the county to help expedite and manage the construction of the ECDC project. This effort will enhance public safety and provide job creation, thus providing positive impacts to area residents and businesses of Indio.

**Additional Fiscal Information**

Vanir's construction management fees in the amount of \$6,472,045 are broken down as follows:

<b>PROJECTS</b>	<b>FEEES</b>	<b>PERCENT</b>
East County Detention Center	\$ 5,717,045	88.33%
ECDC Site Preparation and Demolition	\$ 405,000	6.26%
ECDC Parking Structure	\$ 300,000	4.64%
Indio Larson Justice Center Courtrooms Remodel	\$ 20,000	.31%
East County Emergency Operations Center	\$ 30,000	.46%
<b>TOTAL</b>	<b>\$ 6,472,045</b>	<b>100%</b>

(Continued)

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

Economic Development Agency

**FORM 11:** East County Detention Center – Approval of Construction Management Services,  
District 4, [\$6,472,045], Bond Proceeds

**DATE:** January 30, 2014

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**Additional Fiscal Information (Continued)**

Expenditures for FY 2013/14 are estimated at \$1,300,000; expenditures for FY 2014/15 are estimated at \$1,800,000; expenditures for FY 2015/16 are estimated at \$2,250,000; and expenditures for FY 2016/17 are estimated at \$1,122,045. All costs associated with this project will be fully funded by the General Fund to be reimbursed by Bond Proceeds, thus no additional net county costs will be incurred and no budget adjustment is required at this time.

Attachment:

Construction Management Services with Vanir Construction Management, Inc.

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**STANDARD FORM OF AGREEMENT BETWEEN  
COUNTY AND CONSTRUCTION MANAGER**

by and between

**Vanir Construction Management, Inc.**

(the "Construction Manager")

and

**THE COUNTY OF RIVERSIDE**

(the "County")

**FOR:**

**EAST COUNTY DETENTION CENTER, PHASE 1 & 2**

**46-057 OASIS STREET, INDIO, CA 92201**



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Vanir Construction Management & County of Riverside - East County Detention Center FM08110000265

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[REDACTED]

# STANDARD FORM OF AGREEMENT BETWEEN COUNTY AND CONSTRUCTION MANAGER

— ◆ —

## PREAMBLE

THIS STANDARD FORM OF AGREEMENT BETWEEN COUNTY AND CONSTRUCTION MANAGER ("Agreement") is entered into on this 15th day of April, 2013 by and between THE COUNTY OF RIVERSIDE, a political subdivision of the State of California ("County") and **Vanir Construction Management, Inc.**, a California Corporation, ("Construction Manager"), for project management services.

## RECITALS

**A.** County is the legal owner of the parcel of property, described more particularly in the Property Description - Exhibit "G" attached hereto, located at the following address or public road or highway intersections: **46-057 Oasis Street, Indio, CA 92201.**

**B.** Construction Manager represents it has the background, knowledge, licensing, experience and expertise necessary to provide the services and things required by this Agreement.

**C.** County and Construction Manager desire to enter into this Agreement for Construction Manager to provide County, without limitation, project management services in connection with the development, design and construction of the Project generally described on the cover page to this Agreement.

**D.** County intends to develop and construct a 1,626 bed jail facility including associated demolition of existing county facilities and construction of supporting infrastructure and parking ("Project") on the Site, all substantially in accordance with the Contract Documents (as hereinafter defined).

**E.** County has retained Hellmuth, Obata & Kassabaum, Inc. as the Architect for the Project and may retain other or substitute architects during the duration of the Project.

## TERMS AND CONDITIONS

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein and other valuable consideration, receipt of which is hereby acknowledged by their signatures below, it is mutually agreed by and between the undersigned as follows:

### ARTICLE 1 GENERAL PROVISIONS

#### 1.1 DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings assigned to them in this Section 1.1. If not defined in this Section 1.1, they shall have the meanings assigned to them in the General Conditions of the Standard Form Construction Contract Between County and Contractor - Exhibit "B" attached hereto. If not defined in this Agreement or the General Conditions, they shall have the meanings reasonably understood to apply to them by the context in which they are used. Terms that are phrased in the singular shall be deemed to include the plural, and vice versa, where appropriate to their context. If a

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INITIALS 

Vanir Construction Management & County of Riverside - East County Detention Center FM08110000265

capitalized term is defined both in this Section 1.1 and the General Conditions and the definitions are not identical, the definition set forth in this Section 1.1 shall, unless otherwise stated in this Agreement, govern for purposes of interpreting Construction Manager's obligations under this Agreement.

**1.1.1 Acceptance.** "Acceptance" means the point that the Project is formally accepted by the Board of Supervisors and a Notice of Completion is recorded by County.

**1.1.2 Addendum.** "Addendum" means written or graphic information (including, without limitation, Drawings or Specifications) prepared for and issued to Bidders, which modifies or interprets the proposed Contract Documents by additions, deletions, clarifications, or corrections.

**1.1.3 Additional Insured.** "Additional Insured" means each of the Indemnitees and other persons or entities that, under the terms of this Agreement and its exhibits, the Construction Manager or its Subconsultants are required to name as an additional insured under their policies of insurance.

**1.1.4 Additional Services.** "Additional Services" means the services described or referenced in Article 3, below.

**1.1.5 Additional Services Compensation.** "Additional Services Compensation" means the compensation that is payable to Construction Manager under this Agreement for its performance of authorized Additional Services in accordance with this Agreement, which compensation consists of two components: Additional Services Fees and Reimbursable Expenses.

**1.1.6 Additional Services Fees.** "Additional Services Fees" means those fees for services payable to Construction Manager under this Agreement for authorized Additional Services performed in accordance with this Agreement.

**1.1.7 Agreement.** "Agreement" means this Standard Form of Agreement Between County and Construction Manager.

**1.1.8 Alternate.** "Alternate" means a proposed alternative described in the Bidding Documents adding or deleting a particular material, system, product or method of construction.

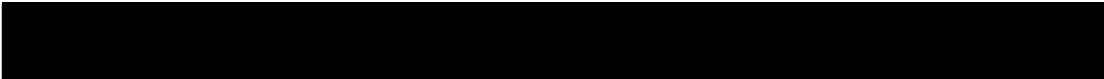
**1.1.9 Applicable Laws.** "Applicable Laws" means all statutes, ordinances, regulations, policies and guidelines (including, without limitation, Environmental Laws and Disability Laws) enacted by Governmental Authorities, codes adopted or promulgated by Governmental Authorities (including, without limitation, building and health and safety codes), lawful orders of Governmental Authorities and common law, including, but not limited to, principles of equity applied by the courts, which are in effect at the time the services or other obligations that are required under or in connection with the performance of this Agreement are performed.

**1.1.10 Application for Payment.** "Application for Payment" means the Contractor's or a Separate Contractor's itemized application for payment for Work.

**1.1.11 Architect.** "Architect" means the individual or firm under contract with County who is primarily responsible to provide the design and engineering services for the Project.

**1.1.12 Architect's Subconsultant.** "Architect's Subconsultant" means a person or firm that has a contract with Architect to provide professional services to the Project.

**1.1.13 Assist.** "Assist" means to provide assistance in accomplishing a task in a secondary, supporting role to another Project Team member who has the lead role and primary responsibility for



performance of the task.

**1.1.14 Assistant CEO/EDA.** "Assistant CEO/EDA" means the Assistant CEO for the Economic Development Agency of the County, or his/her designee.

**1.1.15 Award.** "Award" means a resolution or minute order duly adopted by the Board of Supervisors approving County's entering into the Construction Contract with Contractor or a Separate Contractor.

**1.1.16 Basic Services.** "Basic Services" means the services required by Article 2, below, to be performed by Construction Manager.

**1.1.17 Basic Services Compensation.** "Basic Services Compensation" means the compensation that is payable to Construction Manager under this Agreement for its performance of Basic Services in accordance with this Agreement, which compensation consists of two components: Basic Services Fees and Reimbursable Expenses.

**1.1.18 Basic Services Fees.** "Basic Services Fees" means those fees for services, as distinguished from reimbursement of costs, that are payable to Construction Manager under this Agreement as part of the Basic Services Compensation for Basic Services performed in accordance with this Agreement, which may be in the form of either a Fixed Basic Services Fee or a Maximum Hourly Fee.

**1.1.19 Bid.** "Bid" means a written proposal submitted by a Bidder to County pursuant to the Bidding Documents.

**1.1.20 Bidder.** "Bidder" means a person or entity submitting a Bid.

**1.1.21 Bidding Documents.** "Bidding Documents" means the documents prepared and issued by County to Bidders in connection with a solicitation by County of Bids for Award of a Construction Contract to Contractor or a Separate Contractor for all or a portion of the Work.

**1.1.22 Bidding Phase.** "Bidding Phase" means the Phase of Construction Manager's Basic Services described in Section 2.4, below.

**1.1.23 Board of Supervisors.** "Board of Supervisors" means the Board of Supervisors for the County of Riverside.

**1.1.24 Claim.** "Claim" means a demand or assertion by County or Construction Manager seeking, as a matter of right, an interpretation of contract, payment of money, recovery of damages or other relief. A Claim does not include the following: (1) tort claims for personal injury or death; (2) stop notice claims by Subconsultants; or (3) the right of County to specific performance or injunctive relief to compel performance.

**1.1.25 Close-Out Completion.** "Close-Out Completion" means the point at which: (1) all conditions set forth in the Contract Documents for Substantial Completion and Final Completion of the Work to be performed by the Contractor or a Separate Contractor have been, and continue to be, fully satisfied; and (2) all Close-Out Documents relating to such Work have been received by County.

**1.1.26 Close-Out Documents.** "Close-Out Documents" means all documents (including, without limitation, paper and electronic versions) and other things that are required under the terms of the Contract Documents to be submitted by the Contractor or a Separate Contractor after Final Completion and as a condition of Final Payment to the Contractor or a Separate Contractor, including, without

limitation, Record Documents, warranties, guarantees, technical and product information, product samples, operations and maintenance manuals and excess, replacement and attic stock parts and materials.

**1.1.27 Close-Out Phase.** "Close Out Phase" means the Phase of Basic Services described in Section 2.6, below.

**1.1.28 Comprehensive Management Plan.** "Comprehensive Management Plan" means the Construction Manager's comprehensive written plan for the overall management of the Project.

**1.1.29 Construction Contract.** "Construction Contract" means a written contract executed between County and Contractor or a Separate Contractor for construction of all or a portion of the Work.

**1.1.30 Construction Costs.** "Construction Costs" means the total costs, whether estimated or actual, to construct those elements of the Project designed or specified by Architect or Architect's Subconsultants, inclusive of overhead and profit to Contractor and Separate Contractors performing the Work, but exclusive of: (1) reserves established for use by County; (2) the cost of services of Construction Manager, Subconsultants, Architect, Architect's Subconsultants and County Consultants; (3) land acquisition costs; (4) finance costs; (5) County's administrative costs; and (6) legal fees and costs.

**1.1.31 Construction Documents.** "Construction Documents" means progressive iterations and the final version of the Design Documents prepared by Architect and the Architect's Subconsultants for the Project.

**1.1.32 Construction Schedule.** "Construction Schedule" means a detailed, critical path schedule prepared by the Contractor or a Separate Contractor in accordance with the requirements of the Contract Documents showing its plan for performance of the Work within the Contract Time.

**1.1.33 Contract Adjustment.** "Contract Adjustment" means an adjustment, additive or deductive, to the Contract Price or Contract Time.

**1.1.34 Contract Documents.** "Contract Documents" means the following collection of documents as they may pertain to the Work to be performed by the Contractor or a Separate Contractor under a Construction Contract: (1) the Construction Contract; (2) Addenda; (3) General Conditions; (4) Specifications; (5) Plans and Drawings; (6) Modifications; (7) Reference Documents (as defined in the General Conditions); (8) Change Orders; (9) Unilateral Change Orders; (10) Construction Change Directives; and (11) other documents that comprise exhibits, attachments or riders to the documents listed in preceding Clauses (1) through (10).

**1.1.35 Contract Price.** "Contract Price" means the lump sum amount that County is obligated to pay to the Contractor or a Separate Contractor for performance of Work in accordance with the Contract Documents.

**1.1.36 Contract Time.** "Contract Time" means the total number of Days or period of time set forth in a Construction Contract within which Substantial Completion and Final Completion of the Work must be achieved by the Contractor or a Separate Contractor, including approved extensions of time permitted under the terms of the Contract Documents.

**1.1.37 Contractor.** "Contractor" means the individual or firm under a Construction Contract with County who is to serve as the principal, supervising general contractor for construction of the Project.

**1.1.38 Contractor Safety Plan.** "Contractor Safety Plan" means an injury and illness prevention

plan(s) prepared by Contractor or a Separate Contractor setting forth the safety policies, procedures and forms to be followed and used in connection with performance of the Work.

**1.1.39 County.** "County" means the County of Riverside, a political subdivision of the State of California.

**1.1.40 County Consultant.** "County Consultant" means a professional, of any Tier, retained by County to provide professional services, other than those services provided by Construction Manager or Architect.

**1.1.41 County Consultant Costs.** "County Consultant Costs" means those costs, fees and expenses incurred by County to County Consultants.

**1.1.42 Day.** "Day" means, whether capitalized or not, calendar day, including weekends and legal holidays, unless otherwise specifically stated to be a working or business day.

**1.1.43 Defective Work.** "Defective Work" means: (1) Work by Contractor or a Separate Contractor that is (a) faulty, defective or deficient or (b) does not conform to Applicable Laws, the Contract Documents, the directives of County or Architect issued in accordance with the Contract Documents or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents; or (2) Work that is deficient or defective by reason of a defect or deficiency in the Final Construction Documents or other Design Documents prepared by Architect or a County Consultant.

**1.1.44 Delay.** "Delay" means any circumstances involving delay, disruption, hindrance or interference.

**1.1.45 Deliverables.** "Deliverables" means the completed written work product (including, without limitation, reports, summaries, projections, plans, programs, procedures and minutes) required to be prepared and submitted by Construction Manager to County under the terms of this Agreement, including, without limitation, the following: Comprehensive Management Plan, Document Control Plan, Operations Displacement Plan, Temporary Facilities Plan, Disabled Access Plan, Emergency Response Plan and Project Schedule.

**1.1.46 Design Costs.** "Design Costs" means the total fees and expenses, whether estimated or actual, of the Architect and Architect's Subconsultants for services related to the Project.

**1.1.47 Design Documents.** "Design Documents" means all originals, copies and drafts (whether paper or electronic) of plans, drawings, tracings, specifications, programs, reports, calculations, presentation materials, samples, models and other materials containing designs, specifications, engineering or other information prepared by Architect or Architect's Subconsultants for the Project.

**1.1.48 Design Phase.** "Design Phase" means the Phase of Construction Manager's Basic Services described in Section 2.3, below.

**1.1.49 Development Plan.** "Development Plan" means the County's long-range master plan for development described in the Description of Development Plan - Exhibit "A" attached hereto, of which the Project comprises a part or phase.

**1.1.50 Disability Laws.** "Disability Laws" means applicable federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any Governmental Authority, which regulate, relate to or impose liability or standards of conduct with respect

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to, or accessibility for, persons with disabilities, including, without limitation, the Americans with Disabilities Act (42 USCA §§ 12101 et seq.) and the Fair Housing Amendments Act of 1988 (42 USCA §§ 3604 et seq.).

**1.1.51 Disabled Access Plan.** "Disabled Access Plan" means a written plan prepared by the Architect in accordance with Disability Laws for access and pathways of travel outside of construction boundaries during construction by persons with disabilities.

**1.1.52 Document Control Plan.** "Document Control Plan" means a written plan prepared by Construction Manager for the systemized controlling and managing of Project Documents exchanged or transmitted among Project Team members.

**1.1.53 Drawings.** "Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, including plans, elevations, details, schedules and diagrams. The term "Drawings" is used interchangeably with "Plans."

**1.1.54 Effective Date.** "Effective Date" means the date set forth in the Preamble to this Agreement, or, if none is set forth, the date that this Agreement is signed by the County.

**1.1.55 Emergency Response Plan.** "Emergency Response Plan" means a written plan prepared by Construction Manager for responding to emergencies on the Site.

**1.1.56 Environmental Laws.** "Environmental Laws" means applicable federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any Governmental Authority, which regulate, relate to, or impose liability or standards of conduct concerning any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof), occupational or environmental conditions on, under, or about the Site or Existing Improvements (including, without limitation, soil, groundwater, and indoor and ambient air conditions), environmental protection (natural or manmade resources), or occupational health or industrial hygiene (but only to the extent related to Hazardous Substances on, under, or about the Site or Existing Improvements), as now or may at any later time be in effect, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C.A. §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 [42 U.S.C.A. §§ 6901 et seq.]; the Clean Water Act (also known as the Federal Water Pollution Control Act) [33 U.S.C.A. §§ 1251 et seq.]; the Toxic Substances Control Act [15 U.S.C.A. §§ 2601 et seq.]; the Hazardous Materials Transportation Act [49 U.S.C.A. §§ 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 U.S.C.A. §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 U.S.C.A. §§ 6901 et seq.]; the Clean Air Act [42 U.S.C.A. §§ 7401 et seq.]; the Safe Drinking Water Act [42 U.S.C.A. §§ 300f et seq.]; the Solid Waste Disposal Act [42 U.S.C.A. §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 U.S.C.A. §§ 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 U.S.C.A. §§ 11001 et seq.]; the Occupational Safety and Health Act [29 U.S.C.A. §§ 655 and 657]; the Residential Lead-Based Paint Exposure Act (Title X of the Housing and Community Development Act of 1992) [15 U.S.C.A. §§ 2681 et seq.]; the Lead-Based Paint Poisoning Prevention Act [42 U.S.C.A. §§ 4821 et seq.], the Federal Endangered Species Act, the California Endangered Species Act, the Migratory Bird Treaty Act, the National Environmental Policy Act, the California Environmental Quality Act, Porter Cologne Water Quality Act (California Water Code §§ 13000 et seq), and all similar federal, state or local laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements.

**1.1.57 Estimate of Construction Costs.** "Estimate of Construction Costs" means a written estimate prepared by Construction Manager of the reasonable, anticipated Construction Costs for construction of the Project as depicted or described in then-current version of the Construction Documents.

**1.1.58 Existing Improvements.** "Existing Improvements" means improvements located on the Site as of the Effective Date, whether above or below the surface of the ground, including, but not limited to, existing buildings, utilities, infrastructure improvements and other facilities.

**1.1.59 Final Construction Documents.** "Final Construction Documents" means the point at which the Construction Documents, including, without limitation, all corrections (excluding deferred approvals) required by County or Governmental Authorities, have been completed and approved by the County and permits issued for construction by Governmental Authorities.

**1.1.60 Final Program.** "Final Program" means the Program for the Project approved by County at the conclusion of the Mobilization/Programming Phase, including any modifications thereto that are approved by County in the manner required by this Agreement.

**1.1.61 General Conditions.** "General Conditions" means that portion of the Contract Documents between County and Contractor or Separate Contractor, titled "General Conditions", setting forth the general terms and conditions for construction of the Work and substantially conforming to the General Conditions of the Standard Form Construction Contract Between County and Contractor - Exhibit "B" attached hereto.

**1.1.62 Good Faith Determination.** "Good Faith Determination" means a determination made by the Assistant CEO/EDA, which he/she believes in good faith to be a proper exercise of County's rights and to have a reasonable basis in fact, whether or not such determination is in fact proper, reasonable or correct or adjudged to be so.

**1.1.63 Governmental Authority.** "Governmental Authority" means the United States, the State of California, the County of Riverside (acting in its regulatory, rather than proprietary, capacity), the City in which the Project is located, any other local, regional, state or federal political subdivision, authority agency, department, commission, board, bureau, court, judicial or quasi-judicial body, and any legislative or quasi-legislative body or instrumentality of any of them, which has jurisdiction over the Project, Work or Site, including, without limitation, any such authority having jurisdiction to review and approve or reject the Contract Documents or the Work based on compliance or non-compliance with Applicable Laws.

**1.1.64 Hazardous Substance.** "Hazardous Substance" means the following: (1) any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes," "extremely hazardous substances," "toxic substances," "toxic material," "restricted hazardous waste," "special waste," "contamination" or words of similar import under any Environmental Law, including, without limitation, the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs") and PCB-containing materials, whether or not occurring naturally; or (2) any substance that because of its quantity, concentration or physical or chemical characteristics poses a significant present or potential hazard to human health and safety or to the environment, and which has been determined by any Governmental Authority to be a hazardous waste or hazardous substance.

**1.1.65 Hourly Rates.** "Hourly Rates" means the hourly rates for services that are compensable under this Agreement on an hourly basis and that are set forth in either: (1) the Hourly Rates Schedule - Exhibit "C" attached hereto; or (2) a contract between Construction Manager and a Subconsultant that has been submitted to and approved by County in the manner required by Section 1.6, below.

**1.1.66 Indemnitees.** "Indemnitees" means those persons and entities identified as the "Indemnitees" in Paragraph 9.1.1, below.

**1.1.67 Initial Program.** "Initial Program" means the County's initial statement, set forth in the



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Initial Program - Exhibit "D" attached hereto, of its design objectives for the Project.

**1.1.68 Inspector of Record.** "Inspector of Record" means a person designated by the County to perform inspections on behalf of the County, who may be an employee or an independent consultant to County.

**1.1.69 Intellectual Property Rights.** "Intellectual Property Rights" means all intellectual property rights, including, without limitation, patent, trademark, trade dress, copyright, industrial design rights, priority rights, and trade secrets.

**1.1.70 Interest Rate.** "Interest Rate" means the lesser of either: (1) ten percent (10%) per annum; or (2) the maximum legal rate of interest allowed by Applicable Laws.

**1.1.71 Invoice for Payment.** "Invoice for Payment" means an itemized invoice requesting payment that is prepared and submitted by Construction Manager in accordance with this Agreement.

**1.1.72 Key Personnel, Key Person.** "Key Personnel" and "Key Person" mean those individuals employed by Construction Manager and listed in the Key Personnel List - Exhibit "E" attached hereto, and any additions or replacements thereto approved by County, whose personal performance is deemed of the essence to this Agreement.

**1.1.73 Loss, Losses.** "Loss" and "Losses" mean any and all economic and non-economic losses, costs, liabilities, claims, damages, actions, judgments, settlements and expenses, including, without limitation, full and actual attorney's fees (including, without limitation, attorney's fees for trial and on appeal), expert and non-expert witness fees, arbitrator and arbitration fees and mediator and mediation fees.

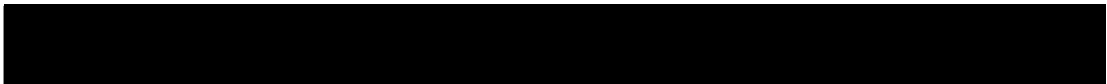
**1.1.74 Manage, Management, Managing.** "Manage", "Management" and "Managing", when used in describing Construction Manager's services, mean and include oversight, coordination, critical evaluation, interfacing with appropriate Project Team members, monitoring, reviewing, reporting, documenting, providing advice and recommendations and expediting and do not, unless expressly stated otherwise in this Agreement, include responsibility for controlling, supervising or directing the day-to-day activities of Project Team members other than Construction Manager's Subconsultants.

**1.1.75 Master Project Schedule.** "Master Project Schedule" means the Master Project Schedule - Exhibit "F" attached hereto, which sets forth the mutually agreed dates and/or time periods for achieving key milestones related to the development, design and construction of the Project.

**1.1.76 Maximum Hourly Fee.** "Maximum Hourly Fee" means the agreed, not-to-exceed amount applicable to compensation for Basic Services, where the Basic Services Compensation is based on an hourly/not-to-exceed compensation rather than a lump sum, fixed fee amount.

**1.1.77 Mobilization/Programming Phase.** "Mobilization/Programming Phase" means the Phase of Construction Manager's Basic Services described in Section 2.2, below

**1.1.78 Mold.** "Mold" means mold, mildew, spores or other microorganisms of any type, nature or description, or any by-product thereof, the presence of which poses an actual or potential threat to human health, including, without limitation, any species of organisms of the kingdom of fungi, or mycota, including yeasts, smuts, ruts, mildews, molds and mushrooms or any microbial contamination, either airborne or surficial, which arises out of or is related to the presence of fungi or spores (including, without limitation, aspergillus, cladosporium, penicillium and stachybotrys chartarum).



**1.1.79 Notice of Completion.** "Notice of Completion" means a "notice of completion" as defined in California Civil Code § 3093.

**1.1.80 Notice of Intent to Award.** "Notice of Intent to Award" means the written notice by or on behalf of County stating County's intent to Award a Construction Contract.

**1.1.81 Operations Displacement Plan.** "Operations Displacement Plan" means a written plan prepared by Construction Manager for maintaining on-going operations and use of the Site, including, without limitation, a plan for coordinated displacement and relocation of facilities services, parking and other on-Site amenities and accommodations that takes into consideration, without limitation, providing barrier-free access, path of travel and use of facilities to and by persons with disabilities and establishment of a comprehensive plan for informational and directional signage and graphics to assure a continuous and efficient flow of foot and vehicular traffic.

**1.1.82 Period of Inactivity.** "Period of Inactivity" means a period of time during which the County has directed in writing that no services are to be performed by Construction Manager or its Subconsultants.

**1.1.83 Phase.** "Phase" means a phase of Construction Manager's Basic Services as set forth in Article 2, below.

**1.1.84 Plans.** "Plans" means the graphic and pictorial portions of the Contract Documents prepared by Architect or Architect's Subconsultants showing the design, location and dimensions of the Work, including, without limitation, plans, elevations, details, schedules and diagrams. The term "Plans" is used interchangeably with "Drawings."

**1.1.85 Post-Completion Phase.** "Post-Completion Phase" means the one-year period following Final Completion and Acceptance of the Project during which one-year warranties of construction are in force and post-completion commissioning activities take place.

**1.1.86 Post-Award Submittals.** "Post-Award Submittals" means the collection of documents required to be submitted by a successful bidder or proposer following its receipt of the Notice of Intent to Award.

**1.1.87 Post-Completion Phase.** "Post-Completion Phase" means the Phase of Construction Manager's Basic Services described in Section 2.7, below.

**1.1.88 Program.** "Program" means the statement of those key elements, criteria and requirements established by County that constitute County's design objectives for the Project, including the Initial Program, Final Program and any revisions thereto authorized in writing by County.

**1.1.89 Project.** "Project" means the work of improvement generally described on the cover page to this Agreement, with respect to which the improvements designed by Architect and Architect's Subconsultants, whether constituting the whole or a part of such work of improvement, are necessary or appurtenant to the County's use or occupancy thereof.

**1.1.90 Project Budget.** "Project Budget" means a written statement of funds available to pay for Project Costs for the Project, approved by County, setting forth detail that includes, at a minimum, separate budgetary amounts for Design Costs, County Consultant Costs and Construction Costs.

**1.1.91 Project Construction Budget.** "Project Construction Budget" means that portion of a Project Budget that sets forth the County's budget for Construction Costs.

**1.1.92 Project Costs.** "Project Costs" means the total of all Design Costs, Construction Costs, County Consultants Costs and other costs, fees and expenses required for design and construction of the Project. Project Costs do not include: (1) purchase price of land acquisition; (2) finance costs; (3) County administrative costs; or (4) legal fees and court costs.

**1.1.93 Project Documents.** "Project Documents" means all writings (including, without limitation, photographs, copies and drafts) of documents, of every kind, prepared by any Project Team member and related in any way to the Project or the Development Program, including, without limitation, electronic files and paper copies.

**1.1.94 Construction Manager's Own Expense.** "Construction Manager's Own Expense", generally used in reference to a cost, expense or service incurred in connection with a particular event or circumstance related to the negligence, breach or other wrongful conduct of Construction Manager or a Subconsultant, means that the services performed and the costs and expenses incurred by Construction Manager and its Subconsultants in connection with such event or circumstance shall be borne by Construction Manager without payment or reimbursement, of any kind, by County.

**1.1.95 Project Reports.** "Project Reports" means the reports required to be submitted by Construction Manager in accordance with Paragraph 2.1.4, below.

**1.1.96 Project Representative.** "Project Representative" is the person identified in Paragraph 1.5.3, below, with the authority to act on behalf of Construction Manager set forth in said Paragraph.

**1.1.97 Project Schedule.** "Project Schedule" means a detailed time schedule prepared by the Construction Manager setting forth the time periods, review times and deadlines for programming, management, design and construction of the Project in accordance with the requirements of the Master Project Schedule.

**1.1.98 Project Team.** "Project Team" means County, Construction Manager, Subconsultants, Architect, Architect's Subconsultants, County Consultants, Contractor, Separate Contractors, Subcontractors and other firms or individuals retained by County, or retained by others with County's approval, participating in the planning, programming, design or construction of the Project.

**1.1.99 Proprietary Information.** "Proprietary Information" means the confidential information described in Section 13.7, below.

**1.1.100 Record Documents.** "Record Documents" means the collection of documents assembled and prepared by Contractor or a Separate Contractor (including, without limitation, the Record Drawings and Record Specifications) showing the condition of the Work as actually built.

**1.1.101 Record Drawings, Record Specifications.** "Record Drawings" and "Record Specifications" mean the Drawings and Specifications marked by Contractor or a Separate Contractor to show the condition, location and placement of the Work as actually built, including, without limitation, the locations of mechanical, electrical, plumbing or similar portions of the Work that are depicted diagrammatically in the Drawings.

**1.1.102 Reimbursable Expenses.** "Reimbursable Expenses" means the cost reimbursement component of Basic Services Compensation and Additional Services Compensation that involves reimbursement of out-of-pocket expenses incurred and paid in connection with the performance of Basic Services or Additional Services.

**1.1.103 Schematic Design Documents.** "Schematic Design Documents" means the schematic

Design Documents prepared by Architect and submitted by Architect for approval by County.

**1.1.104 Separate Contractor.** "Separate Contractor" means a person or firm, other than the Contractor, under separate contract with County to perform or supply work, materials or equipment to the Project.

**1.1.105 Site.** "Site" means: (1) the parcel of land identified in the Property Description - Exhibit "G" attached hereto and such additional parcels as may be purchased by County for the Project after execution of this Agreement; (2) all areas adjacent to such parcels that may be used by Contractor or a Separate Contractor or their Subcontractors for staging, storage, parking or temporary offices; and (3) all land areas, both private and public, adjacent to such parcels on which Work is required to be performed under the Contract Documents, Applicable Laws or permits relating to the Project.

**1.1.106 Specifications.** "Specifications" means the portion of the Contract Documents consisting of the written requirements for materials, equipment, standards and workmanship for the Work and performance of related services.

**1.1.107 Subconsultant.** "Subconsultant" means a person or firm that has a contract with Construction Manager to provide some portion of the services that are covered by this Agreement.

**1.1.108 Subcontractor.** "Subcontractor" means a person or firm that has a contract to perform a portion of Work of Contractor or a Separate Contractor, including, without limitation, subcontractors, sub-subcontractors, suppliers, equipment operators, manufacturers and vendors, of every Tier.

**1.1.109 Submittal.** "Submittal" means shop drawings, detailed designs, samples, exemplars, product data, fabrication plans, installation drawings, lists, graphs, operating instructions, and other similar documents required to be submitted by Contractor or a Separate Contractor for review and approval in accordance with the terms of the Contract Documents.

**1.1.110 Temporary Facilities Plan.** "Temporary Facilities Plan" means a written plan prepared by Construction Manager for establishing temporary facilities to accommodate construction on Site, including, without limitation, identification of timing and duration of facilities placement, costs of placement, installation and leasing, square footage requirements, program requirements, build-outs, logistics of mobilization and utilization of swing space within existing buildings.

**1.1.111 Tier.** "Tier" means the contractual level of a Subconsultant with respect to Construction Manager, a Subcontractor with respect to the Contractor or a Separate Contractor or a County Consultant with respect to County. For example, a "first-Tier" Subcontractor is under contract with the Contractor. A sub-subcontractor under contract with a first-Tier Subcontractor is in the "second Tier," and so on.

**1.1.112 Work.** "Work" means all labor, materials, equipment, services, permits, licenses, taxes and other actions and things necessary for Contractor or a Separate Contractor to fully perform its obligations under the Contract Documents (including, without limitation, any changes, additions or deletions requested by County).

## **1.2 INCORPORATION OF RECITALS**

The Recitals set forth above are hereby incorporated as part of this Agreement.

## **1.3 PERFORMANCE STANDARD**

**1.3.1 Standard of Care.** Without limitation to Construction Manager's other obligations under

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this Agreement, all services performed by Construction Manager and its Subconsultants in connection with this Agreement shall be performed in a manner consistent with a high standard of care under industry standards and Applicable Laws applying to those who specialize in providing project and construction management services for projects of the type, scope and complexity of the Project.

**1.3.2 Fiduciary Relationship.** Construction Manager acknowledges the relationship of trust and confidence between it and County and agrees to provide, in its capacity as a fiduciary to County, all services in a manner consistent with the expressed best interests of County.

**1.3.3 Leadership Role.** Construction Manager understands and accepts that, within the scope of the services to be provided by Construction Manager under this Agreement, Construction Manager shall demonstrate and practice, at all times, leadership in facilitating the prompt, efficient administration and economical construction of the Project, including, without limitation: (1) reasonably anticipating the needs of County; (2) proactively identifying and expediting resolution of matters in question among Project Team members; (3) keeping all Project Team members fully informed, to the extent appropriate to their respective roles and responsibilities, of current information, recent developments and upcoming deadlines and milestones; and (4) working to create and build a team approach among the Project Team members.

#### **1.4 AUTHORITY OF CONSTRUCTION MANAGER**

Construction Manager's authority is limited to its scope of authority set forth in this Agreement and the General Conditions. Notwithstanding anything else stated in this Agreement or any of the Contract Documents, Construction Manager does not have the express or implied authority to contractually obligate County to any expenditure of money or extension of time, including, without limitation, any adjustment to the price or time of performance of any contract between County and the Contractor, any Separate Contractor, any County Consultant or any other third person or entity.

#### **1.5 CONSTRUCTION MANAGER'S PERSONNEL**

**1.5.1 Commitment, Cooperation.** Recognizing the necessity of a close working relationship with County, Construction Manager's principals and employees shall: (1) furnish their professional skill, efforts and judgment to the fullest extent in the performance of their duties and responsibilities under this Agreement; (2) provide their knowledge, ideas, experience and abilities for the efficient and cost effective design and construction of the Project; and (3) cooperate fully with all members of the Project Team.

##### **1.5.2 Key Personnel.**

**.1 Key Personnel List.** Those persons who have been identified by County and Construction Manager at the time of execution of this Agreement to perform services as Key Persons for the Project are listed in the Key Personnel List - Exhibit "E" attached hereto. Construction Manager represents that it has performed a thorough background check of each of the Key Persons, and that each such check disclosed no felony conviction or other matter which cast any reasonable doubt on the competency, reliability, or honesty of such person.

**.2 Of Essence.** Construction Manager shall devote as many persons and personnel hours to the Project as are needed to meet its obligations under the Agreement. The Key Persons shall provide in-depth guidance, supervision and analysis, and make all material decisions required to carry out the Construction Manager's performance properly and promptly. The furnishing of services by the Key Persons is of the essence to this Agreement.

##### **.3 Additions, Removals, Replacements.**

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(1) **Additions.** It is contemplated that from time to time, as appropriate and necessary to the stage of planning, programming, design, and construction, the need may arise for persons to be added to the Key Personnel List - Exhibit "E" attached hereto to perform the functions of one or more Key Persons. Construction Manager shall anticipate the need for such additions by submitting to County, no later than seven (7) Days prior to the need therefor, a written request for any proposed additions and the reasons therefor. County shall promptly review and respond to the Construction Manager's request, including in such response its reasons for any disapproval. Construction Manager shall neither allow any person who is not a Key Person approved by County to perform the functions of a Key Person nor allow any Key Person approved by County to perform the functions of any other Key Person previously approved by County without the advance written approval of County, which approval may be withheld if the County, acting in good faith, objects thereto.

(2) **Removal.** Construction Manager shall not, for so long as any person is employed by Construction Manager as a Key Person, remove, replace or transfer the responsibilities of such person without County's prior written approval, which may be granted or withheld in County's sole and absolute discretion. If County is for any reason dissatisfied with the services rendered by any Key Person, Construction Manager shall promptly recommend a substitute person as a replacement pursuant to Subparagraph 1.5.2.3, (3), below.

(3) **Replacements.** In the event that Construction Manager learns that any Key Person will be leaving the employ of Construction Manager, Construction Manager shall promptly notify County. In such case, or if a Key Person is requested to be removed pursuant to Subparagraph 1.5.2.3, (2), above, Construction Manager shall promptly recommend for approval by County a proposed replacement person of at least equal qualifications to perform the functions of the removed Key Person, which approval may be granted or denied in County's sole and absolute discretion. Construction Manager shall bear, at Construction Manager's Own Expense, all Loss associated with replacing, for any reason, any Key Person, including, without limitation, all additional costs and expenses associated with familiarizing the Key Person's replacement with the particular facts, circumstances and history of the Project.

(4) **No County Liability.** Neither County's request for removal, nor County's approval or disapproval, of a Key Person shall be interpreted as (a) creating any liability or responsibility on the part of County for the acts or omissions of such Key Person; (b) waiving any of County's rights under this Agreement or Applicable Laws; or (c) relieving Construction Manager of its sole responsibility for the acts and omissions of all persons employed by Construction Manager who perform services for the Project, including, without limitation, all Key Persons and their replacements.

**1.5.3 Project Representative.** The Project Representative is **Peter Watts**. The Project Representative has the authority to act on behalf of Construction Manager in respect to all matters that are the subject of this Agreement. The party signatory to this agreement on behalf of the Construction Manager has, without limitation, the power and authority to contractually bind Construction Manager to agreements and modifications of agreements. The Project Representative is deemed to be a Key Person. The Project Representative shall be available at all times during all Phases to consult with County on matters pertinent to the Project.

**1.5.4 Sole Responsibility.** All persons employed by Construction Manager shall be the employees of Construction Manager and not of County. Construction Manager and its Subconsultants shall each respectively pay all wages, salaries, and other amounts due employees in connection with their performance under this Agreement and required by law. Construction Manager and its Subconsultants shall each respectively be solely responsible for any workers' compensation obligations, withholding taxes, unemployment insurance and any other employer obligations with respect to its employees.

## 1.6 SUBCONSULTANTS

**1.6.1 Retention.** Construction Manager may, with prior written approval by County granted or withheld in the County's sole and absolute discretion, retain Subconsultants to perform portions of the services required by this Agreement.

**1.6.2 Approval by County.** Construction Manager's request for approval to retain a Subconsultant shall be submitted in a writing that describes the name of the proposed Subconsultant and the full contractual terms of the Subconsultant's proposed retention, including, without limitation, the scope of services, total or maximum price and/or hourly rates, terms of reimbursement (including any markups or multipliers) and insurance. A copy of the entire proposed contract to be executed by Construction Manager for the retention of the Subconsultant shall be provided to County if requested by County. County shall use its best efforts to approve or disapprove of a proposed Subconsultant within seven (7) Days of Construction Manager's request therefor and receipt by County of information requested by County pursuant to this Paragraph 1.6.2. Basic Services or Additional Services charged by Subconsultants who have not been approved by, or whose contractual terms of retention have not been submitted to, County pursuant to this Paragraph 1.6.2 will be deemed performed at Construction Manager's Own Expense.

**1.6.3 Pre-Approved Subconsultants.** The County has pre-approved the following Subconsultants:

- Willdan Engineering, San Bernardino, CA – Grading Plan Review & Building Code Review
- The Fire Consultants Inc., Walnut Creek, CA – Smoke Control Plan Check Services
- LA Const. Photo Doc., Inc. (Multivista) , Marina Del Rey, CA – Webcam Services
- Shadpour Consulting Engineers, Inc. – Building Commissioning Services

Such pre-approval shall be deemed to constitute approval by County as required by Paragraph 1.6.1, above, but shall not be interpreted as a waiver of County's other rights under Paragraph 1.6.2, above, concerning approval of contractual terms and the right to copies of Subconsultant contracts.

**1.6.4 Written Contracts.** Subconsultants shall be retained by written contract with Construction Manager. Every contract entered into between Construction Manager and a Subconsultant (and between a Subconsultant and a lower-Tier Subconsultant) shall contain appropriate language whereby each Subconsultant, of every Tier, accepts and agrees, without thereby creating any contractual obligation on the part of County to the Subconsultant or any other Subconsultant, of any Tier, to be bound by all of the obligations of this Agreement, including, without limitation, those obligations pertaining to indemnification, insurance, records retention, audit, dispute resolution and ownership of documents. Construction Manager further agrees to include in its contracts with its first-Tier Subconsultants the following provisions: (1) a contingent assignment of the contract to County or its designee, contingent only upon written acceptance by County or its designee; and (2) the optional right of County to directly contract with the Subconsultant for the performance of services related to the Project that are not within the scope of Construction Manager's Basic Services under this Agreement.

**1.6.5 Supervision.** All Basic Services that are within the field of professional practice of a Subconsultant approved by County and retained by Construction Manager shall be directly performed or supervised by such Subconsultant. Notwithstanding the foregoing, Construction Manager shall remain solely responsible, as between Construction Manager, on the one hand, and County or any other person

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or entity to whom County may be liable, on the other hand, for the adequacy of the Subconsultant's performance and its compliance with the requirements of this Agreement.

**1.6.6 Termination.** Construction Manager may, upon advance written notice to County, terminate and replace the services of any County-approved Subconsultant, subject in all cases to the prior written approval of County, which approval shall not be unreasonably withheld, conditioned or delayed.

**1.6.7 No County Responsibility.** Neither County's approval of the Construction Manager's retention of a Subconsultant nor County's review or approval of a Subconsultant's contractual terms of retention, even if those terms conflict with this Agreement, shall give rise to any liability or responsibility on the part of County for the acts or omissions of the Subconsultant, waive any of County's rights, or relieve Construction Manager of any of its obligations under this Agreement. Construction Manager shall remain solely responsible to County, notwithstanding County's approval of any Subconsultant or its contractual terms of retention, for the quality and performance of all Subconsultants' services, and for the content, enforceability, and enforcement of all contractual terms relating to all Subconsultants's performance of services for the Project.

## **1.7 OWNERSHIP OF DOCUMENTS**

**1.7.1 Property of County.** Subject to the rights of use of Construction Manager and its Subconsultants under Paragraph 1.7.5, below, all Project Documents prepared by Construction Manager or its Subconsultants, including any designs, building designs or other depictions underlying or shown in them, shall be deemed the sole and exclusive property of County and ownership thereof is irrevocably vested in County, whether the Project is executed or not.

**1.7.2 Assignment of Rights.** Subject to the rights of use of Construction Manager and its Subconsultants under Paragraph 1.7.5, below, Construction Manager shall, without further request or consideration from County, obtain and if necessary transfer to County, in writing, any and all Intellectual Property Rights in the Project Documents prepared by Construction Manager or its Subconsultants, including any designs, building designs or other depictions underlying or shown in them, free and clear of any liens or other encumbrances, claims or rights of third parties, and cooperate with County in securing and registering such rights, so that County shall own all Intellectual Property Rights and any other tangible and/or intangible property rights in or associated with such Project Documents. Such transfer and assignment will be effective for the entire duration of the Intellectual Property Rights therein and include, but are not be limited to, all rights in related plans, specifications, documentation, derivative works and moral rights.

**1.7.3 Use by County.** Without limitation to the other provisions of this Section 1.7, County shall have the right to use the Project Documents prepared by Construction Manager for the construction, use, occupancy or maintenance of the Project, including, without limitation, future additions, alterations, corrections or repairs to the Project.

**1.7.4 Construction Manager's Warranty.** Construction Manager represents and warrants that the Project Documents, whether prepared by Construction Manager or a Subconsultant, and the use of such Project Documents in the ordinary course, are free of any claim of infringement or any other violation of any Intellectual Property Right or other right of any third party.

**1.7.5 Use by Construction Manager.** Except as otherwise stated in this Paragraph 1.7.5, Construction Manager shall not copy, offer to sell, display, prepare derivative works of, distribute, make, or otherwise commercialize, any of the Project Documents prepared by Construction Manager or its Subconsultants, or any substantially or confusingly similar likeness thereof, for any purpose, without



the prior written consent of County, which consent may be granted or denied in the sole and absolute discretion of County. Notwithstanding the foregoing, nothing herein shall be interpreted as limiting the right of Construction Manager to copy, offer to sell, display, prepare derivative works of, distribute, make, or otherwise commercialize any standard or pre-existing information, including information that is part of the public domain, that is generally known or in use by other construction managers or which was developed or created by Construction Manager or a Subconsultant prior to or independent of the services performed under this Agreement. County hereby grants to Construction Manager and its Subconsultants a license during the term of Construction Manager's performance of this Agreement and prior to final payment to Construction Manager, revocable at will by County in the event of a termination of this Agreement, to use and copy the Project Documents prepared by Construction Manager or its Subconsultants and the designs depicted in or underlying them for the purpose of performing the services required under this Agreement.

**1.7.6 Inspection by County.** County shall have the right at any time or times, upon prior written request by County, to review the status and condition of the Project Documents prepared by Construction Manager or its Subconsultants and to request that copies thereof be provided to County.

**1.7.7 Delivery to County.** Construction Manager shall, at any time upon request by County and without request by County upon or after termination or full performance of this Agreement, promptly deliver to County the originals and copies (including paper and electronic versions) of all Project Documents, whether prepared by Construction Manager or the Subconsultants. Electronic versions shall be submitted using AutoCAD, Adobe Acrobat or other software satisfactory to County and shall be in a form that is indexed and editable. Construction Manager shall be permitted to retain copies, including reproducible copies, of the Project Documents for its files, information and reference.

**1.7.8 Disputes.** Payment shall not be interpreted as a condition to, nor shall disputes between County and Construction Manager diminish or in any way limit, the rights of County under this Section 1.7.

## **1.8 APPLICABLE LAWS**

**1.8.1 Compliance with Laws.** Subject to the other provisions and limitations of this Section 1.8 and without intending to limit Construction Manager's right to Additional Services Compensation for changes in Applicable Laws pursuant to Article 3, below, Construction Manager shall, at all times in its performance under this Agreement, comply with Applicable Laws. The foregoing obligation includes, without limitation, the obligation of Construction Manager and its Subconsultants to perform in accordance with Applicable Laws in effect on the date of such performance.

**1.8.2 Changes in Laws.** Construction Manager is obligated, exercising the standard of professional care set forth in Section 1.3, above, to keep informed and advise County of possible changes in Applicable Laws that affect the Project and promptly inform County of such changes in advance of their becoming effective.

**1.8.3 Direct Communications.** Construction Manager shall not communicate directly with any Governmental Authority without County's prior approval, which approval shall not be unreasonably delayed, conditioned or withheld.

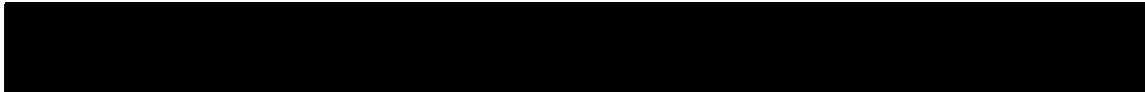
## **1.9 TIME OF ESSENCE**

All time limits set forth in this Agreement pertaining to Construction Manager's performance of any obligation or act for the benefit of County or the Project are deemed to be of the essence to this Agreement.

Edition: August, 2013

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**1.10 EFFECTIVE DATE**

This Agreement shall be deemed effective as of the Effective Date.

**1.11 ARCHITECTURAL, ENGINEERING, LEGAL AND CERTIFIED PUBLIC ACCOUNTING SERVICES**

Nothing contained in this Agreement shall be deemed to require or authorize the Construction Manager to perform any act for which a professional license is required by Applicable Laws in the fields of architecture, engineering, law or certified public accounting.

**ARTICLE 2  
BASIC SERVICES**

**2.1 GENERAL PROVISIONS**

**2.1.1 Basic Services.** Basic Services are those services that Construction Manager is required to provide under the terms of this Article 2. Listings of Basic Services in this Agreement by Phase are solely a matter of convenience and shall not be interpreted as limiting the Construction Manager's obligation to perform any Basic Service, as part of any Phase, if such performance is reasonably necessary in order to provide Construction Management of the Project; provided, however, that Construction Manager's Basic Services required for the Post-Completion Phase are limited to those services described in Section 2.7, below. County and Construction Manager have endeavored to describe in this Article 2 the scope of the Basic Services to be provided by Construction Manager; however, such descriptions are not intended to be exhaustive, it being understood that Construction Manager shall be required, without adjustment or addition to any agreed fixed rates or maximum compensation agreed to herein, to provide services, reasonably inferable as being included within the scope of this Agreement.

**2.1.2 Comprehensive Management Plan.** The Construction Manager shall, with appropriate input from the County, promptly prepare, and thereafter promptly update and maintain as current, a Comprehensive Management Plan summarizing Construction Manager's plan for administering, monitoring, implementing and reporting on matters within the scope of its responsibility under this Agreement, including, without limitation: (1) identification of other Project Team members to be engaged and approximate dates for hiring; (2) summarization of a working plan for the Project Team members (including, without limitation, lines of communication and basic responsibilities for design, cost, schedule and construction); (3) establishment, documentation and implementation of controls for quality assurance in respect to performance by Project Team members in each phase of planning, programming, design, procurement, construction, close-out and post-completion; (4) strategies and recommendations for use, where appropriate, of alternative delivery systems (such as, but not limited to, design-build), multiple bid packaging, phasing, and fast-tracking; (5) procedures that provide for preparation and continuous updating of a schedule of activities of Project Team members with attention to those portions of the Project having schedule priority; (6) procedures for summarization of the financial status of the Project; and (7) procedures for the updating of the Comprehensive Management Plan as necessary to meet changing circumstances.

**2.1.3 Development Plan. NOT USED**

**2.1.4 Project Reports.** Project Reports shall be prepared and submitted to the County's designated Project Manager monthly (and more often if circumstances reasonably require), in both paper form and electronically, utilizing a format satisfactory to and approved by County. Project Reports shall keep the County fully informed on matters relating to cost, budget, and schedule, as well as potential

problems or other matters that could adversely affect the completion of the Project within the County's time and cost objectives. Without limitation to the foregoing, and subject to the County's right to request such additional information as it judges in its reasonable discretion to be pertinent, Project Reports shall include at a minimum the following: (1) an executive summary; (2) the last 30 Days' highlights and accomplishments; (3) the current status of design and construction; (4) the next 30 Days' projected activities; (5) a detailed status report covering all significant developments in the Project; (6) updated construction costs and schedule information; (7) a safety report; (8) key progress photos of construction; (9) a status report summary of pending and approved Change Orders, Unilateral Change Orders and Construction Change Directives; (10) a status report summary of pending and approved Submittals; (11) a status report summary of pending and answered Requests for Information; (12) a status report summary of pending and unresolved claims; (13) a Master Project Schedule and Project Schedule update; and (14) the identification of significant problems impacting cost or schedule and strategies for their resolution.

**2.1.5 Project Meetings.** Construction Manager shall throughout all Phases of its Basic Services: (1) arrange, chair (if requested by County) and attend all special and regularly scheduled meetings with County, Project Team members or Governmental Authorities; (2) if requested by County, coordinate such meetings' agendas; (3) unless otherwise directed by County, prepare and distribute minutes of such meetings; (4) respond to requests for corrections to such minutes; (5) include in such minutes a list of action items assigned to a particular Project Team member along with a date for further action or resolution; and (6) track compliance by responsible Project Team members, including, without limitation, providing written notice to appropriate Project Team members to expedite action and resolution of outstanding action items.

**2.1.6 Financial Reporting. NOT USED**

**2.1.7 Schedule and Progress Reporting.** Construction Manager shall on a monthly basis collect schedule and progress information from Project Team members, evaluate it for completeness and accuracy based on current and historical data and include in its Project Reports a summary of the schedule and progressed status of the Project that addresses, at a minimum, the status of the progress of the Work as compared to the updated Master Project Schedule, Project Schedule and the schedules prepared by Architect and Contractor, noting if there has occurred a Delay to a phase, major task or milestone, the number of Days of Delay, the reason for the Delay, the impact of the Delay on design, construction, completion and occupancy, and a recommended recovery plan for recapturing the time lost. Scheduling and progress information shall be prepared in multiple summary forms that "roll up" data in a coordinated and consistent manner to successively higher levels of reporting.

**2.1.8 County Consultants.** Construction Manager shall advise County on the appropriate time for retention of County Consultants whose services are necessary for the Project, allowing a reasonable time in advance for prequalification, competitive selection and contract negotiation and Assist County with the preparation of a definitive scope of services describing the scope of their services to be performed for County.

**2.1.9 Project Team Management.** Construction Manager shall, without assuming responsibility or liability for the direct supervision of performance by Project Team members, Manage the activities of the Project Team members, including, without limitation, the following:

.1 receive information, notices, requests or other materials from one or more Project Team members that are intended for other Project Team members, put such materials into appropriate form for submission to the intended recipients and deliver such materials to such recipients in a timely manner;



.2 monitor and evaluate the performance by Project Team members who provide professional or construction services to the Project for compliance with their obligations under their respective agreements with the County, notify the County if it appears that any Project Team member is not in compliance with said obligations and provide County with recommendations for rectification of such noncompliance;

.3 on a monthly basis (and, more frequently if the County or circumstances reasonably require): (1) evaluate time schedules and schedule updates of schedules prepared by other Project Team members retained by County; (2) receive and evaluate requests for time extensions and compensation for Delay received from any Project Team member retained by County; (3) evaluate actual progress of such Project Team member's performance relative to its schedule and keep the County fully advised on issues that could affect the Project Team member's meeting the deadlines and milestones set forth in its schedule; and (4) keep Project Team members informed of any upcoming deadlines or milestones relevant to the timing of their performance and provide necessary follow-up to remind Project Team members in advance of deadlines that are critical to maintaining progress of the Project;

.4 critically evaluate the performance of cost estimating services by other Project Team members and provide recommendations to the County with respect to the sufficiency and completeness of their estimates and with respect to the need, if any, for preparation of independent estimates of costs related to design, construction, life cycle and maintenance;

.5 without limitation to Construction Manager's other obligations under this Article 2 and exercising the performance standard set forth in Section 1.3, above, review the written work product submitted to County by other Project Team members for evident errors or omissions, report any errors or omission discovered to County, and provide County with appropriate recommendations for rectifying same;

.6 monitor compliance by Project Team members other than County with the procedures for communications established by Construction Manager and approved by County and recommend action by County to enforce compliance; and

.7 promptly advise County if there appears to be an unnecessary duplication or overlap of services being provided by Project Team members, along with Construction Manager's recommendations for eliminating such duplicative or overlapping services.

**2.1.10 Governmental Authorities.** Construction Manager represents that, consistent with its performance standard set forth in Section 1.3, above, it is thoroughly knowledgeable in the requirements of Governmental Authorities as they apply to the development, design, permitting and construction of the Project. Construction Manager shall: (1) perform its services under this Agreement with all necessary and due consideration to such requirements of Governmental Authorities; (2) Manage compliance by the Project Team members with such requirements of Governmental Authorities; and (3) immediately report to the County in writing if Construction Manager becomes aware of a failure by a Project Team member to comply with such requirements of any Governmental Authority.

**2.1.11 Commissioning.** Construction Manager shall, during all Phases of design and construction of the Project, coordinate the work of the County Consultants in the field of commissioning, including, without limitation, final commissioning throughout the Post-Completion Phase.

**2.1.12 Risk Management.** NOT USED

**2.1.13 Computer Aided Design.** Construction Manager represents that it has and will maintain throughout performance of this Agreement the necessary software, and shall at all time have persons on

[REDACTED]

its staff with the expertise, required to receive, review, evaluate and transmit Project Documents that are prepared using AutoCAD electronic media.

**2.1.14 Communications.** Construction Manager shall comply with all written procedures issued by County for the conduct of communications relating to the Project or among the Project Team members. All communications with County shall be directed or copied to the attention of the Assistant CEO/EDA or his/her designee. County will endeavor to furnish Construction Manager with copies of written communications from County to Architect, Contractor, Separate Contractors and County Consultants that are pertinent to the Construction Manager's services under this Agreement.

**2.1.15 Construction Means, Methods and Safety.** Except in cases where the Construction Manager or a Subconsultant has breached an express obligation of this Agreement, violated an Applicable Law, acted with willful misconduct or violated the standard of performance set forth in Section 1.3, above, and then only to the extent of such breach, willful act or violation, Construction Manager shall have no responsibility or liability with regard to, and Contractor and the Separate Contractors shall be solely responsible for, all selections (other than those selections expressly dictated by Construction Manager or the Subconsultants) of, and all supervision, implementation and enforcement relating to, construction means, methods, sequence, techniques, procedures or related matters involving the health and safety of persons or the protection of property at the Site during construction.

**2.1.16 Rejection of Work.**

**.1 Inspector of Record.** Construction Manager shall coordinate with the Inspector of Record the rejection of Work that does not conform to the Contract Documents, including, without limitation, Work that has not been inspected or tested in accordance with the requirements of the Contract Documents.

**.2 Decision by County.** The decision whether to reject any portion of the Work recommended for rejection by Construction Manager shall be made only after consultation with Architect and upon written approval by County.

**.3 No Duty of County.** Neither the foregoing authority of County under, nor a decision made in good faith by County in accordance with, the provisions of this Paragraph 2.1.16 to reject, not reject or approve of Work shall give rise to a duty or liability of County to Construction Manager, Architect, Contractor, or any other person or entity to reject Work, whether or not such rejection is recommended by Construction Manager.

**.4 Contractor Responsibility.** No determination by the Inspector of Record to reject or not reject Work shall be interpreted as relieving the Contractor or any Separate Contractor of its responsibility for failing to comply with the Contract Documents.

**2.1.17 No Authority to Stop Work.** Construction Manager shall immediately recommend to County the stopping of the Work if circumstances come to Construction Manager's attention that reasonably require the stopping of the Work in order prevent Loss to County or injury or damage to persons or property. Nothing stated herein or elsewhere in this Agreement or its exhibits shall be interpreted as giving Construction Manager or its Subconsultants the right or authority, under any circumstances, to direct the Contractor or Separate Contractor to stop performance of the Work (except in instances where immediate injury or loss of life will occur).

**2.1.18 Testing and Inspections.**

**.1 Recommendations.** Construction Manager shall recommend in writing for

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inclusion in the Bidding Documents and Contract Documents any additional special inspection or testing of the Work if, in Construction Manager's or a Subconsultant's judgment, such inspection or testing is required by Applicable Laws or is necessary or advisable for the performance of the Work.

**.2 Review of Reports.** Construction Manager and its Subconsultants shall assist the Inspector of Record in review of all inspection reports, laboratory reports, and test data generated from the conduct of special inspections or testing in order to determine whether such data conforms to the requirements of the Bidding Documents, Contract Documents and Submittals approved by Architect.

**.3 No Duty of County.** Neither the authority of County to decide whether inspection or testing is needed, nor a decision made in good faith by County to order or not order inspection or testing, shall give rise to a duty or liability of County to Construction Manager, Architect, Contractor, or any other person or entity.

**.4 Contractor Responsibility.** No determination that is made by Construction Manager in good faith and in accordance with the standard of performance set forth in Section 1.3, above, to recommend or not recommend additional inspection or testing of the Work shall give rise to any liability on the part of Construction Manager or be interpreted as relieving Contractor or any Separate Contractor of its responsibility for failing to comply with the Contract Documents.

**2.1.19 Document Control Plan.** Construction Manager shall prepare for approval by County a Document Control Plan for filing and storage of Project Documents (hard copies and electronic) and shall implement, maintain and track compliance by Project Team members with the Document Control Plan. If requested by County, Construction Manager shall include in its Document Control Plan recommendations for establishment of an electronic program management system for the furnishing, storage, exchange and transmission of electronic documentation and communications relating to the Project that includes, without limitation, the following: (1) using e-mail for communications, wherever possible; (2) using electronic versions of Design Documents for distribution for bidding or other purposes; (3) scanning of documents; and (4) cooperating in maintaining a common file and electronic archive. All costs of setting up the electronic program management system will be paid directly by County. Construction Manager shall comply with the requirements of the Document Control Plan and make recommendations to County for enforcing compliance by other Project Team members who fail to comply therewith.

## **2.2 MOBILIZATION/PROGRAMMING PHASE**

**2.2.1 Mobilization.** Construction Manager shall promptly mobilize its staff, facilities and other resources necessary to maintain an action-ready staff at the Site to respond to the needs of the County and the Project.

**2.2.2 County Priorities.** Construction Manager shall: (1) work with the County to acquire an understanding of those portions of the Project having priority for design, construction or occupancy; (2) advise the County on establishing a schedule for phased development of the Project that takes into consideration such priorities; and (3) review and confirm, on a regular basis with such frequency as reasonably required, the status of such priority determinations and any changes thereto.

**2.2.3 Project Delivery.** Construction Manager shall provide advice and recommendations on the use of project delivery options and their suitability to the Project, such as, but not limited to, multiple bid packaging, design/build, phasing and fast-tracking.

**2.2.4 Initial Program. NOT USED**

**2.2.5 Final Program. NOT USED**

**2.2.6 Site Conditions. NOT USED**

**2.3 DESIGN PHASE**

**2.3.1 Construction Documents.** Using individuals thoroughly familiar and experienced in reading documents prepared using computer-aided design, Construction Manager shall, exercising the standards of performance set forth in Section 1.3, above, and not the standard care of a design professional nor the acceptance of any design liability, review and evaluate the Construction Documents submitted by the Architect and County Consultants for: (1) compliance with the Master Project Schedule, Project Schedule, Project Construction Budget and prior iterations of Construction Documents that have been approved by County; (2) general correlation of the Construction Documents with the Design Documents prepared by Architect and County Consultants; (3) elimination of interferences that would disrupt construction activities; (4) constructability using current construction techniques and taking into consideration the availability of local labor and materials and long lead-time purchases; (5) sufficiency of detail so as to minimize the need for clarifications and changes; and (6) consistency of the overall design with the observed and reported conditions at the Site and in Existing Improvements. Construction Manager shall interface with the Architect and County Consultants for the purpose of coordinating, facilitating and expediting the implementation of recommendations for design revisions requested by County, recommended by County Consultants or required by Governmental Authorities. Construction Manager shall then conduct back checks to confirm that such changes and corrections are incorporated into the Final Construction Documents, Bidding Documents and Contract Documents. Construction Manager is not responsible for providing, nor does Construction Manager control the project design or the contents of the construction documents. By performing the reviews described herein, Construction Manager is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the project design or construction documents. Construction Manager's obligation is to conduct the reviews with the agreed upon level of effort as reflected in Exhibit "N" and as set forth in this section, and provide recommendations to the County. The Architect is not a third party beneficiary of Construction Manager's work described herein and the Architect remains solely responsible for the contents of the design and construction documents.

**2.3.2 Value Engineering.** Construction Manager shall identify high cost, comparatively low value items or systems and make recommendations to the County of alternatives thereto that would reduce costs and improve cost/benefit ratios, taking into consideration such relevant factors as the following: initial cost; availability; durability; reliability; maintenance; energy consumption; life-cycle costs; construction feasibility; design; access and use of the Site; selection of materials, building systems and equipment; possible adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and future uses of facilities.

**2.3.3 Construction Phasing.** Construction Manager shall, taking into considerations conditions at the Site and in Existing Improvements and constraints, construction requirements, sequence of operations, methods of traffic control and related activities, provide recommendations and information relative to: (1) phasing of the Work; (2) use, location and availability of equipment, materials and services for use by Contractor and Separate Contractors; and (3) potential interferences with other current or future projects contemplated by the Development Plan.

**2.3.4 Labor Availability.** Construction Manager shall investigate the availability of appropriate categories of labor for critical phases of the Work and make recommendations for actions to minimize adverse effects of labor shortages, work stoppages and strikes.

**2.3.5 Permits, Easements, Approvals.** Construction Manager shall: (1) identify permits, easements and approvals required of Governmental Authorities; (2) Assist County and Architect in assembling the necessary documents for obtaining permits, easements and Governmental Authority

approvals; (3) schedule and monitor the periods of time set aside for obtaining permits, easements and Governmental Authority approvals; (4) report to County any Delays which are observed in obtaining permits, easements, and Government Authority approvals and recommend recovery plans; (5) facilitate the inspection process of Governmental Authorities; (6) as and when requested, attend meetings necessary to secure permits, easements and Governmental Authority approvals; (7) if Construction Manager learns that any required permit or approval that it believes County is obligated to obtain directly has not been obtained, notify County immediately in writing specifying the permit or approval required and the time frame within in which it must be obtained in order to not cause Delay to the Project.

**2.3.6 Estimates of Construction Costs.** Construction Manager shall prepare detailed Estimates of Construction Costs reflecting the Construction Manager's opinion, based on the then-current version of the Construction Documents prepared by Architect, of the probable Construction Costs that are likely to be incurred by County to construct the Project in accordance with said Construction Documents Four (4) Estimates of Construction Costs shall be prepared as part of Basic Services. Additional Estimates of Construction Costs shall, subject to the other requirements of Article 3, below, be deemed Additional Services. Estimates shall be prepared in a format and shall include such detail as reasonably requested by County; provided, however, that Construction Manager shall not be required to prepare detailed quantity surveys or materials take-offs. In addition, Construction Manager shall: (1) review and evaluate estimates of Construction Costs prepared by Architect or County Consultants; (2) compare them with the Project Construction Budget, Project Budget and the latest Estimate of Construction Costs prepared by Construction Manager; and (3) if any estimate or portion of an estimate prepared by Architect, County Consultant or Construction Manager is inconsistent with or exceeds the Project Construction Budget or Project Budget and such inconsistency cannot be otherwise eliminated, reconciled or resolved, provide recommendations for elimination or reduction in Construction Costs to address such inconsistencies.

**2.3.7 Temporary Facilities Plan.** Construction Manager shall prepare for approval by County a written Temporary Facilities Plan for establishing temporary facilities to accommodate construction on Site, including, without limitation, identification of timing and duration of facilities placement, costs of placement, installation and leasing, square footage requirements, program requirements, build-outs, logistics of mobilization and utilization of swing space within existing buildings.

**2.3.8 Operations Displacement Plan. NOT USED**

**2.3.9 Disabled Access Plan. NOT USED**

**2.3.10 Emergency Response Plan.** Construction Manager shall coordinate with the Contractor and submit for approval by County an Emergency Response Plan for responding to emergencies on the Site.

**2.3.11 Independent Design Reviews.** Construction Manager shall: (1) advise County on the timing, need and selection of County Consultants for independent (i.e., "peer") design review of the Construction Documents; (2) Manage the independent review process; and (3) confirm that the independent design reviewer's comments are addressed by each Project Team member whose work product is affected.

## **2.4 BIDDING PHASE**

**2.4.1 Scope Descriptions.** Construction Manager shall, if requested by County, prepare scope of work descriptions for incorporation by County in the County's forms for pre-qualification and bidding.



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**2.4.2 Prequalification.** Construction Manager shall Assist County in: (1) establishing rules and procedures relative to prequalification and bidding; (2) organizing and conducting reference checks and interviews of Bidder references; (3) scoring, ranking and pre-qualifying Bidders; and (4) preparing and issuing responses to questions and requests for clarification from Bidders.

**2.4.3 Conferences.** Construction Manager shall Assist County in arranging and conducting pre-bid conferences with prospective Bidders to walk the Site and review the bidding process.

**2.4.4 Reference Documents.** Construction Manager shall research, identify and assemble lists and copies of Reference Documents that are to be made available to Bidders for review.

**2.4.5 Bidding Documents.** Construction Manager shall: (1) review all final, approved and stamped Bidding Documents for issuance to Bidders; (2) confirm that they include the Final Construction Documents approved by the County and Governmental Authorities; and (3) review the Construction Contract, General Conditions, Specifications and other contractual language proposed by County and other Project Team members for inclusion in the Contract Documents and provide recommendations to County for changes to such language that are appropriate and necessary to meet the particular needs of the Project and that will, to the maximum extent reasonably possible, clearly define requirements and responsibilities of Project Team members.

**2.4.6 Schedule of Values.** Construction Manager shall develop a list of the cost items to be included in the Schedule of Values based on the Construction Specification Institute's format or other format approved by County and submit the recommended form to County for use as the Schedule of Values for inclusion in the Bidding Documents.

**2.4.7 Addenda.** Construction Manager shall, after obtaining appropriate technical advice from Architect, Assist the Architect and County in preparing and issuing Addenda to Bidders.

**2.4.8 Post-Award Submittals.** Construction Manager shall Assist the County in: (1) collecting, organizing and assembling Post-Award Submittals; and (2) evaluating Post-Award Submittals for compliance with the requirements of the Bidding Documents.

**2.4.9 Debriefings.** Construction Manager shall, if requested by County, Assist the County in conducting debriefing of unsuccessful Bidders.

**2.4.10 Protests.** Construction Manager shall Assist the County upon request in responding to protests or other legal challenges to the bidding process.

## **2.5 CONSTRUCTION PHASE**

**2.5.1 General Conditions.** Construction Manager acknowledges that it has reviewed the form of General Conditions attached hereto as General Conditions of the Standard Form Construction Contract Between County and Contractor - Exhibit "B". As part of Basic Services and in addition to the obligations assumed by Construction Manager under this Article 2, Construction Manager shall administer the construction of the Work by Contractor and Separate Contractors in accordance with the General Conditions, including the provision of all of the services as required or allowed by its terms to be performed by the "Construction Manager" (as defined in the General Conditions), as well as Assisting the County in the performance of any obligation to be performed by County under the terms of the General Conditions.

**2.5.2 Payments.** Construction Manager shall Manage the processes for receipt, review, approval, disapproval and return (including, without limitation, the processes pertaining to withholding of

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funds and nullification of prior approval) of Applications for Payment from the Contractor and Separate Contractors as set forth in the Contract Documents, including, without limitation: (1) reviewing Applications for Payment for completeness (including, without limitation, compliance with the cost coding requirements of County) for the purpose of confirming, based on Construction Manager's observations of the Work, that the portions of the Work for which payment is being requested have been performed to the extent represented in the Application for Payment; (2) determining if the types of costs, amounts and terms of stated in the Applications for Payment are in accordance with the Contract Documents; (3) approving all or such portions of the Applications for Payment as Construction Manager recommends for payment and disapproving all or such portions that Construction Manager does not recommend for payment; (4) forwarding each Application for Payment that Construction Manager approves for payment by County, bearing a statement or signature confirming that it is "approved for payment" by Construction Manager; (5) if any portion of an Application for Payment is disapproved by Construction Manager for payment, identifying the portion disapproved and the reasons for such disapproval; (6) following consultation with County, providing timely notice to Contractor and Separate Contractors of any required approval and/or disapproval by Construction Manager or another Project Team member of any portion of an Application for Payment in the manner required by Contract Documents; (7) making recommendations, when circumstances warrant, for issuance of joint payments; (8) reviewing for completeness and compliance with the Contract Documents all documentation required by the Contract Documents that is submitted with Applications for Payment, including, without limitation, all releases of stop notice rights (both conditional and unconditional) executed by the Contractor, Separate Contractor and all Subcontractors, of every Tier, including, but not limited to, Subcontractors who have served preliminary lien notices.

**2.5.3 On-Site Representatives.** Unless otherwise requested by County in writing, Construction Manager shall provide a competent representative or representatives at the Site at all times that Work is being performed who shall provide administration of the Work as required by the Contract Documents and this Agreement and who shall act as the conduit of communications between the Contractor and Separate Contractors, on the one hand, and the County and other Project Team members, on the other hand. At least one such representative of Construction Manager shall be available 7 Days a week and 24 hours a Day to respond to emergencies.

**2.5.4 Construction Meetings.** Construction Manager shall attend all regular and special construction meetings and perform the services related thereto that are required by Paragraph 2.1.5, above.

**2.5.5 Surety Bonds.** Construction Manager shall: (1) evaluate surety bonds for compliance with the Contract Documents; (2) in the event of a default by Contractor or a Separate Contractor that requires County to make demand under a bond, Assist County in providing such notices to sureties as may be required in order to preserve the County's rights under such bond; (3) if requested by County, Assist County in the negotiation of terms for performance by sureties of their obligations under such bonds; and (4) Manage the performance of the Work to Final Completion (whether by surety or a completion contractor retained by surety or County) with appropriate consideration and steps being taken to document the completion process for the purposes of substantiating future claims by the County.

**2.5.6 Safety.** Construction Manager shall: (1) prior to any Work commencing at the Site, review the approved Contractor Safety Plan(s) prepared by the Contractor and Separate Contractors for general compliance with the requirements of the Contract Documents; (2) walk the Site at least once each Day for the purpose of making general observations of the Work, noting any apparent safety violations or unsafe conditions; (3) include in its daily report to County a statement either that no violations of the Contractor Safety Plan(s) or unsafe conditions were observed that Day or if they were observed, a statement identifying those violations or conditions actually observed; and (4) if unsafe conditions or violations of the Contractor Safety Plan(s) are observed, immediately take action to report

them to the responsible Project Team member so that action can be taken to correct such violations or conditions and conduct such follow-up as is reasonably necessary to see that such conditions or violations have been corrected. The foregoing responsibilities of the Construction Manager related to safety are undertaken with the understanding that the Contractor and Separate Contractors are primarily responsible for safety at the Site and that the Construction Manager's agreement to perform its obligations under this Paragraph 2.5.6 shall not be interpreted as relieving the Contractor and Separate Contractors of their responsibility under their respective contracts with County for the sufficiency, implementation and enforcement of their respective Contractor Safety Plans.

**2.5.7 Utilities Coordination.** Construction Manager shall Manage all utilities shut downs and start ups in a manner that is consistent with the County's requirements for on-going operations and use of the Site and Existing Improvements during construction. The foregoing responsibilities of the Construction Manager related to utilities are undertaken with the understanding that the Contractor and Separate Contractors are primarily responsible for planning and implementing shut downs of utilities at the Site and that Construction Manager's agreement to perform its obligation under this Paragraph 2.5.7 shall not be interpreted as relieving the Contractor and Separate Contractors of their responsibility under their respective contracts with County for providing all notifications to utility providers or Governmental Authorities of utility disconnections or relocations and for performing such disconnections and relocations in accordance with the requirements of the Contract Documents and Applicable Laws.

**2.5.8 Requests for Information.** Construction Manager shall: (1) receive all Requests for Information from Contractor and Separate Contractors; (2) review them for clarity and obtain further clarification as needed before transmitting them to the appropriate Project Team member for response; (3) log and track the status of Requests for Information in a document control log; (4) Assist the appropriate Project Team member in preparing and processing responses; (5) provide follow-up to secure timely responses; (6) expedite return of responses as soon as possible (generally within seven (7) Days after receipt) so as to avoid Delay to the Work; and (8) issue reminders to appropriate Project Team members of the need for response to Requests for Information held for more than seven (7) Days without response.

**2.5.9 Changes.** When Changes in the Work of the Contractor or a Separate Contractor become necessary, Construction Manager shall Manage the process of submittal, review, approval and performance of the Changes as set forth in the Contract Documents, including, without limitation, the following: (1) reviewing, assembling, and evaluating documentation of Changes (including, without limitation, Notices of Change, Change Order Requests, Change Orders, Unilateral Change Orders and Construction Change Directives); (2) verifying (without the necessity of continuous observation of Work) in the field actual labor, time and materials expended; (3) making recommendations to County with respect to the completeness, sufficiency and compliance of such documentation with the requirements of the Contract Documents; (4) forwarding, as required by the Contract Documents, such documentation to the appropriate Project Team member(s) for review; (5) expediting responses by the appropriate Project Team member(s); (6) preparing independent estimates, if requested by County, of the cost and time impact of Changes and requests for Contract Adjustment; (7) scheduling, attending and conducting meetings for review and discussion of unresolved issues; (8) negotiating resolution of disputed Changes and requests for Contract Adjustments with the responsible Contractor or Separate Contractor; (9) substantiating in writing, if requested, Construction Manager's recommendations to County as to the acceptability of the Contractor's and Separate Contractors' cost proposals for Contract Adjustments; (10) upon final approval by County, forwarding completed Change Order, Unilateral Change Order and Construction Change Directive documentation to the appropriate Project Team member for processing; (11) preparing and distributing on a regular basis (no less frequently than monthly) as part of its Project Reports a Change Order, Unilateral Change Order and Construction Change Directive status report listing all approved, pending, disapproved and disputed Change Orders, Unilateral Change Orders and Construction Change Directives by number, brief descriptions of the Change involved and the amount of

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any requested, pending, approved, disapproved or disputed Contract Adjustments; (12) verifying that any Contract Adjustments of the Contract Time approved by County have been incorporated into the Project Schedule and the Contractor's and Separate Contractors' updated Construction Schedules; and (13) collecting, authenticating (on a daily basis as required) and reviewing for completeness and compliance with the Contract Documents, the time and material information submitted by the Contractor and Separate Contractors of labor, materials, services and equipment furnished to perform Changes.

**2.5.10 Submittals.** Construction Manager shall Manage the processes for receipt, review, approval and return of Submittals, including, without limitation, the following: (1) receiving the Submittals; (2) reviewing the Submittals, not for technical sufficiency, but to determine if they have been assembled in accordance with the requirements of the Contract Documents; (3) logging the Submittals in the appropriate control log; (4) delivering Submittals to the Architect or appropriate County Consultant for technical review; (5) receiving and logging returned Submittals received from the Architect or County Consultant; (6) confirming that Submittals have been stamped by the reviewing Architect or County Consultant indicating the status of their review and approval; (7) delivering to the Contractor any Submittals returned by the Architect or County Consultant; (8) storing approved physical sample Submittals approved by the Architect or a County Consultant at the Site so that they are available for review by Project Team members; (9) reviewing the status of the Submittals in the construction meetings in an effort to expedite processing; (10) reporting on Delays in the processing of Submittals; (11) issuing a reminder to the Architect or County Consultant conducting a review of a Submittal that has been held more than seven (7) Days without a response; (12) evaluating the Submittal Schedules and updated Submittal Schedules prepared by Contractor and Separate Contractors for reasonableness, completeness and compliance with the Contract Documents; and (13) developing recovery plans if the circumstances or timing of the submission or return of a Submittal threatens to cause a Delay to the Contractor's or a Separate Contractor's achieving Substantial Completion or Final Completion within the Contract Time.

**2.5.11 County-Furnished Materials.** County is responsible for coordinating and tracking the purchase, fabrication and delivery of County Furnished Materials including storage, protection, security, inventory and installation. Construction Manager shall alert and advise County of related schedule milestones to facilitate timely installation of County Furnished Materials.

**2.5.12 Schedule of Values.** Construction Manager shall: (1) review the values inserted in the Schedule of Values to determine if they represent fair and balanced allocations of the Contract Price; (2) verify the correlation of the trade line item estimates for Work in the Schedule of Values to the actual Subcontractor subcontract values; and (3) make recommendations for necessary adjustments to the Schedule of Values.

**2.5.13 Construction Schedules.** Construction Manager shall Manage the processes for receipt, review, evaluation and approval or disapproval of the Construction Schedules and other short-term "look ahead" schedules, and updates thereof, prepared by Contractor and Separate Contractors, including, without limitation, the following: (1) receiving, reviewing, analyzing and advising County on the suitability of such schedules; (2) checking that such schedules are prepared in accordance with the requirements of the Contract Documents and that they are consistent with the terms of the County's contracts with other Project Team members; (3) conducting meetings to facilitate compliance by Contractor and Separate Contractors with the scheduling requirements of the Contract Documents; (4) providing to County, in writing if requested, a written explanation of the basis for the Construction Manager's disapproval of any portion of such schedules that Construction Manager does not approve; (5) reporting to County, in writing if requested, on variances between as-built progress of the Work and the planned progress of the Work as set forth in such schedules; (6) review the contractor's written recovery plans to recapture time lost or to overcome Delays and make recommendations accordingly; (7) recommending necessary actions to County should Contractor or a Separate Contractor fail to make any

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appropriate or required corrections to such schedules; and (8) reviewing, critically evaluating and making recommendations, in writing if requested, to County regarding, written requests by Contractor and Separate Contractors for time extensions, requests for additional compensation related to Delay and proposals for acceleration to overcome Delay.

**2.5.14 Staffing.** Construction Manager shall: (1) evaluate monthly, at a minimum, the adequacy of Contractor's and each Separate Contractor's staffing levels and the availability of critical materials and equipment; (2) recommend courses of action when it appears that Contractor's or a Separate Contractor's resources are inadequate or that critical materials or equipment may be delayed.

**2.5.15 Report Review.** Construction Manager shall review and provide recommendations to respond to issues raised in reports submitted by other Project Team members and notify the appropriate Project Team members if the reports are incomplete, illegible, or inconsistent with facts known by Construction Manager.

**2.5.16 Daily Reports.** At the end of each Day that Contractor or a Separate Contractor performs Work on the Site, Construction Manager shall submit (by paper original or, if requested, electronically), separately for the Contractor and each Separate Contractor who performed Work on such Day, a daily report to County (on a form provided or approved by County) that includes, at a minimum, the following:

- .1 Labor - The number of workers in each trade as reported by the General Contractor and as generally observed in the field.
- .2 Material - A list of materials onsite/delivered.
- .3 Equipment - A list of equipment onsite/delivered.
- .4 Inspection and Testing Activities - A list of inspections performed by name of inspector and testing company and the type of inspection, items of the Work involved and a description of the outcome of such inspection or test.
- .5 Areas of the Work - A statement of the areas of the Site on which the Work was performed and a detailed description of the stage, status and progress of the Work in each such area at the beginning and end of the Day.
- .6 Accidents, Delays, Defective Work - A description in detail of any injuries to the workers, accidents, delays, or Defective Work that is observed by or reported to Construction Manager.

**2.5.17 Photographic Record.** Construction Manager shall provide photographic documentation of the Site immediately prior to the start of construction, at regular intervals during construction and at Final Completion. One set of progress photographs of the Project shall be regularly taken, no less frequently than weekly during the Work, from a common, fixed vantage point. Photographic documentation shall show all significant progress, which Construction Manager understands may necessitate more extensive photographing on some days and weeks than others or from additional vantage points. When problems arise, Construction Manager shall act promptly to document the conditions by photographing specific conditions and any changes in the conditions as they occur.

**2.5.18 Observations at Site.** Construction Manager shall be present at the Site during the performance of the Work so as to become familiar with the progress and quality of the completed Work, to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in

accordance with the Contract Documents and to guard against Defective Work. The Construction Manager's duty to make observations pursuant to this Paragraph 2.5.18 includes the obligation to make diligent, daily observations, but not necessarily exhaustive observations, of the condition of the Work at the Site.

**2.5.19 Defective Work.** Based on Construction Manager's observations at the Site, Construction Manager shall: (1) alert the Inspector of Record as to work that may be considered Defective Work; (2) assist the Inspector of Record in maintaining a log describing Defective Work identified and the status of the correction thereof; and (4) take necessary follow-up action to expedite correction by the responsible Project Team member.

**2.5.20 Means, Methods. NOT USED**

**2.5.21 Inspections, Testing.** Construction Manager shall Manage the processes of inspection and testing, including, without limitation, the following: (1) Assisting the County in selecting and retaining qualified Inspectors of Record; (2) Assisting Contractor and Separate Contractors in coordinating inspections; (3) confirming compliance by Project Team members with the directives of Inspectors of Record; and (4) providing follow-up to expedite and confirm timely submission by the responsible Project Team member of inspection reports to Governmental Authorities.

**2.5.22 Permits.** Construction Manager shall: (1) review permits to determine that they are current; (2) report to County and Contractor any violations of applicable conditions of permits; (3) recommend corrective action to cure such violations; (4) issue appropriate correction notices to Contractor and Separate Contractors; and (5) verify that corrective action has been taken in accordance with the requirements of Government Authorities, the Contract Documents and the directives of County.

**2.5.23 Urban Runoff and Storm Water. NOT USED**

**2.5.24 CEQA Compliance.** Construction Manager shall: (1) take reasonable steps to ensure that no Work that is subject to California Environmental Quality Act (CEQA) proceeds by Contractor until Contract Documents satisfying the CEQA process are reviewed and approved by the County; (2) Manage Contractor's and Separate Contractors' compliance with applicable CEQA requirements and if there is a federal nexus (e.g. a source of federal funding) to the Project, their compliance with the National Environmental Policy Act (NEPA); and (3) Manage Contractor's and Separate Contractors' compliance with the applicable requirements pertaining to Mitigation, Monitoring, and Reporting Program (MMRP).

**2.5.25 AQMD Compliance.** Construction Manager shall Manage Contractor's and Separate Contractors' compliance with, as applicable: (1) AQMD Rule 403.1, County Ordinance 742, the County MOU with AQMD dated January 6, 2004 Agenda Item 3.1 (for projects in the Coachella Valley); or (2) AQMD Rule 403 (for projects west of the Coachella Valley).

**2.5.26 Field Monuments.** Construction Manager shall report to County if any survey markers or monuments have been disturbed and promptly recommend corrective action.

**2.5.27 Certified Payrolls.** If certified payroll records are required to be submitted under the terms a Construction Contract or Applicable Laws, Construction Manager shall: (1) collect certified payroll records submitted by Contractor and Separate Contractors; (2) in the event that Contractor or a Separate Contractor has failed to submit certified payroll records, notify the County and such Contractor or Separate Contractor of such failure, along with a request to such Contractor or Separate Contractor that it comply; (3) forward all certified payroll records received to the County for further action; and (4) if necessary, recommend action by County to enforce compliance by Contractor and Separate Contractors with the requirements of their contracts with County for submission of certified payroll records and

payment of prevailing wages.

**2.5.28 Record Documents.** Construction Manager shall Manage compliance by Contractor and the Separate Contractors with their obligations for posting and maintenance of Record Drawings and Record Specifications and recommend action to County for any observed non-compliances.

**2.5.29 Claims.** Construction Manager shall, if requested by County: (1) Assist the County in the analysis of claims submitted to County by a Project Team member; (2) produce or obtain from the appropriate Project Team member any records and documents required to Assist the County in its analysis of such claims; (3) Assist the County in resolving such claims; and (4) review and comment on any final settlement documents prepared by the County for settlement of such claims on terms approved by County.

## **2.6 CLOSE-OUT PHASE**

**2.6.1 Inspection.** Construction Manager shall Manage the processes for inspection and approval to determine Substantial Completion and Final Completion, including, without limitation, the following: (1) conduct inspections to verify Substantial Completion and Final Completion; (2) notify the Contractor and Separate Contractors of Substantial Completion, Final Completion and Acceptance; and (3) if requested by County, certify in writing the dates of Substantial Completion and Final Completion.

**2.6.2 Punch Lists.** Construction Manager shall Manage the processes for preparation, receipt, review, modification and approval of punch lists, including, without limitation, the following: (1) reviewing and evaluating for completeness the punch lists of items prepared by Contractor and Separate Contractors for Substantial Completion and Final Completion; (2) distributing the punch lists to the appropriate Project Team members for review; (3) ascertaining any items of Work to be added to the Substantial Completion Punch List and Final Completion Punch List; (4) causing such items to be added to the Substantial Completion Punch List and Final Completion Punch List; (5) evaluating and confirming that all items on the Substantial Completion Punch List and Final Completion Punch List have been completed in accordance with the Contract Documents prior to approving of Substantial Completion or Final Completion; and (6) recommending modifications and additions to the punch lists to add any items of Work necessary to Substantial Completion or Final Completion that have been omitted.

**2.6.3 Operational Testing.** Construction Manager shall Manage the process of operational testing of utilities, building systems and equipment, including, without limitation, the following: (1) arranging for and documenting final testing to determine readiness for use; (2) Assisting the Contractor and Separate Contractors in the start-up and testing; (3) scheduling with Contractor and Separate Contractors and County's operations, facilities and maintenance personnel and documenting the occurrence of, all required start-up and related testing; and (4) Assisting the Contractor and Separate Contractors in scheduling and conducting equipment and systems operations and maintenance training of County's operations, facilities and maintenance personnel.

**2.6.4 Occupancy Permits.** When the Construction Manager considers the Work, or a portion designated by County for separate delivery, to be Substantially Complete, the Construction Manager shall: (1) Assist County and Contractor in obtaining all certificates of occupancy required for occupancy of the Work or portions designated by County for separate delivery; and (2) confirm that the conditions to issuance of such permits are being and have been accomplished.

**2.6.5 Final Payment.** In addition to the Construction Manager's obligations under Paragraph 2.5.2, above, Construction Manager shall Manage the processes for receipt, review and responding to Applications for Payment by Contractor and Separate Contractors requesting Final Payment, including, without limitation, the following: (1) receiving, reviewing and recommending whether payment should be

made upon the Application for Payment and recommending any withholding; (2) confirming that all Close-Out Documents required by the Contract Documents have been received by the County; (3) notifying County of any items required for Final Completion that have not been submitted and of what actions Construction Manager is taking, or recommends, to obtain such items; (4) not recommend payment upon Contractor's or a Separate Contractor's Application for Payment until all punch list items necessary to Final Completion have been completed and all documents required to be submitted by Contractor or the Separate Contractor under the Contract Documents and all other actions required to be taken have been received and taken; and (5) if requested by County and after consultation with County, Assisting County in resolving payment disputes between County and Contractor or a Separate Contractor.

**2.6.6 Close-Out Documents.** Construction Manager shall Manage the processes for close-out of the Project as required by the Contract Documents, including, without limitation, the following: (1) review and confirm the completeness and accuracy of the Record Documents and other Close-Out Documents and, if significant discrepancies are noted, notify County, Architect and Contractor or Separate Contractor of same and perform such follow-up as may be necessary to assure that corrections are made; and (2) obtain and transmit warranties, keys, maintenance stocks and other Close-Out Documents as required by the Contract Documents.

**2.6.7 Audit.** If requested by County, Construction Manager shall Assist County in arranging audits of the books and records of Contractor, Separate Contractors or other Project Team members.

## **2.7 POST-COMPLETION PHASE**

Construction Manager shall accompany the Architect in a warranty review of the Work Ten (10) months after Final Completion. Construction Manager shall within thirty (30) Days after the date of such review make written recommendations to County for the correction of any Defective Work discovered. As part of Basic Services, the number of working hours to complete such review and preparation of written recommendations shall not exceed Twenty-four (24) hours. Hours in excess of the aforesaid number of hours included as Basic Services shall be compensated as an Additional Service only if approved in advance in writing by County.

## **2.8 SCHEDULING**

**2.8.1 Master Project Schedule.** Construction Manager shall perform its Basic Services consistent with the Master Project Schedule - Exhibit "F" attached hereto.

**2.8.2 Project Schedule.** Within thirty (30) Days after execution of this Agreement, the Construction Manager shall prepare and present for approval by County a detailed Project Schedule setting forth the key milestones and deadlines that need to be met by the Project Team members in order to meet the requirements of the Master Project Schedule. Once the Project Schedule is approved, Construction Manager shall inform the Project Team members of the deadlines set forth in the Project Schedule that are applicable to them and Manage the performance by Project Team members in a manner that facilitates their meeting those deadlines.

**2.8.3 Extensions.** A failure by Construction Manager to perform its Basic Services consistent with the Master Project Schedule or Project Schedule approved by County shall not be considered a default of this Agreement to the extent such failure is due to unavoidable and unforeseeable Delays that are beyond Construction Manager's and its Subconsultants' reasonable control and beyond Construction Manager's responsibility under this Agreement (such as, but not limited to, strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any Governmental Authority to act in a reasonably timely manner, failure by County to timely provide information or approvals or Delays caused by the fault of the Contractor or Separate Contractors), but only if Construction Manager has given written



[REDACTED]

notice to County of the circumstances of such Delay within seven (7) Calendar Days after first learning of the circumstances causing such Delay.

**2.8.4 Updates.** Construction Manager shall, no less frequently than monthly, update and expand the level of detail in the Project Schedule as the Project progresses, indicating the current status of scheduled activities and projections of the likely completion of major tasks. If significant variance from planned activities occurs, Construction Manager shall recommend recovery plans to County and, upon obtaining County's approval thereof, modify the Project Schedule to incorporate such recovery plans.

**2.8.5 County Review.** Construction Manager is solely responsible, notwithstanding County's review or approval thereof, for the completeness, accuracy and suitability of the Project Schedule and all updates thereof.

**2.8.6 No Delay.** Construction Manager shall not delay its interpretations, decisions, reviews or other functions pursuant to this Agreement or otherwise cause or contribute to a Delay to the progress of design or construction of the Project.

**2.8.7 Delay Losses.** Construction Manager's sole and exclusive right and remedy for recovery or compensation for Losses related to Delay, of any kind, are: (1) its right to Additional Services Compensation for Additional Services to the extent permitted by Paragraph 3.2.4, below, and (2) its right to adjustment of the Hourly Rates, if any, provided for by this Agreement. All other rights and claims by the Construction Manager, on its own behalf and on behalf of its Subconsultants, for Losses relating to Delay, from any cause whatsoever, are hereby waived.

### ARTICLE 3 ADDITIONAL SERVICES

#### 3.1 DEFINITION, AUTHORIZATION

Additional Services are services, which, if authorized by and performed in accordance with this Agreement, are paid for by County in the form of Additional Services Compensation. Additional Services consist solely and exclusively of those services listed in this Article 3. Additional Services shall be performed only if authorized and directed in writing by County in advance and in accordance with this Article 3. Additional Services, whether or not listed in this Article 3, do not include any service that arises, in whole or in part, from the breach of this Agreement by Construction Manager or an act or omission of Construction Manager or a Subconsultant constituting negligence (ordinary or professional), willful misconduct or a violation of Applicable Laws.

#### 3.2 ENUMERATION OF ADDITIONAL SERVICES

Additional Services include and are not limited to the following:

**3.2.1** providing services that are categorically, by reason of the type or nature of the service involved and not the quantity of services required, outside the scope of services that are required to be performed by Construction Manager as part of Basic Services under this Agreement;

**3.2.2** providing additional, unforeseeable Basic Services to Manage the replacement or repair of Defective Work;

**3.2.3** providing services, including witness preparation, in connection with a mediation, arbitration, or legal proceeding, except where any party to such proceeding has alleged in good faith the occurrence of: (1) a breach of this Agreement by Construction Manager; or (2) an act or omission of

[REDACTED]

Construction Manager or a Subconsultant constituting negligence (ordinary or professional), willful misconduct, or a violation of Applicable Laws;

**3.2.4** providing additional Basic Services for the Management of the Work that, solely due to circumstances for which the Construction Manager is entitled to an extension of time under Paragraph 2.8.3, above, unless County has issued a notice under Paragraph 1.1.82 above; provided, however, that nothing herein shall be interpreted as entitling Construction Manager to be paid duplicative compensation (both as Additional Services and Basic Services), if Construction Manager has not exceeded the staffing hours set forth in Exhibit "N";

**3.2.5** providing Estimates of Construction Costs that exceed the number of estimates required by Paragraph 2.3.6, above; and

**3.2.6** providing consultation for replacement of work damaged by fire or other cause during construction and furnishing services in conjunction with replacement work.

**3.2.7** providing any other service not otherwise included in this Agreement.

### **3.3 NOTICE OF ADDITIONAL SERVICES**

Construction Manager shall notify County in writing within five (5) Days after learning of any circumstance (including, without limitation, any direction or request by County or other Project Team member) that Construction Manager believes may give rise to performance of Additional Services. Except as otherwise provided in Section 3.4, below, Construction Manager waives the right to compensation for Additional Services performed without prior written approval by the Board of Supervisors expressly acknowledging that the service is an Additional Service.

### **3.4 DISPUTES**

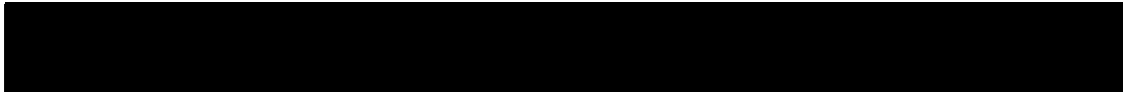
If a good faith dispute arises as to whether a particular service performed or to be performed is a Basic Service or an Additional Service, Construction Manager will, if requested to do so by County in writing, nevertheless promptly perform such service and pay any expenses associated with such performance, pending resolution of such dispute. Neither County's request, Construction Manager's performance nor County's payment therefor will constitute a waiver on the part of County or Construction Manager of their respective rights or defenses with respect to the appropriate classification of such service, which rights and defenses shall remain subject to determination in accordance with Article 11, below.

## **ARTICLE 4 COUNTY RESPONSIBILITIES**

### **4.1 ADMINISTRATION BY COUNTY**

**4.1.1 County Requirements.** County shall provide such information as is requested by Construction Manager regarding the County's objectives, schedule, constraints, criteria, space requirements and relationships, flexibility, expandability, special equipment and Site requirements.

**4.1.2 County Approvals.** County shall promptly respond to Construction Manager's requests for decisions, approvals or information; provided, however, that no failure by County to respond shall entitle Construction Manager to an adjustment of the Master Project Schedule or Project Schedule except as permitted by Section 2.8, above. Construction Manager shall remain solely and exclusively responsible and liable, notwithstanding the review or approval by County, for the content, completeness and adequacy of all Project Documents prepared by Construction Manager, including, without limitation, all



Deliverables.

**4.1.3 Assistant CEO/EDA.** Subject in all cases to prior approval by the Board of Supervisors as required by Applicable Laws, the Assistant CEO/EDA is the sole representative of County with authority on behalf of County to: (1) approve or revise the Final Program; (2) authorize the performance of Additional Services or incurring of Reimbursable Expenses; or (3) commit or bind County to any obligation to pay any sums of money or additional compensation other than, or beyond, the amount of the agreed Basic Services Compensation in association with performance of Additional Services.

**4.2 PROJECT INFORMATION**

County shall furnish, upon written request by Construction Manager, information reasonably available to County concerning the Project, including surveys, soil reports, subsurface investigations, as-builts of Existing Improvements, descriptions of legal limitations, utility plans and similar information. Construction Manager is entitled to rely thereupon; however, County does not warrant, expressly or impliedly, the accuracy, suitability or completeness of such information or of any data, opinions or recommendations contained therein and it shall not be considered a breach by the County of this Agreement in the event there are errors or omissions in such information, data, opinions or recommendations.

**4.3 ACCESS TO SITE**

Construction Manager shall at all times during performance of this Agreement have access to the Site and to the Work, at whatever stage the Work is in its preparation or progress, to facilitate Construction Manager's performance of its obligations under this Agreement. Employees of Construction Manager and its Subconsultants shall, at all times while present on the Site, comply with the safety requirements applicable to the Project.

**ARTICLE 5  
CONSTRUCTION MANAGER'S COMPENSATION**

**5.1 BASIC SERVICES COMPENSATION**


**5.1.1 Total Compensation.** Construction Manager shall be paid a total Basic Services Compensation for performance of Basic Services (including, without limitation, Basic Services performed by Subconsultants) comprised exclusively of (1) Basic Services Fees plus (2) authorized Reimbursable Expenses and (3) County controlled Fee Allowance for Construction Manager for unforeseen Owner needs. Basic Services Compensation constitutes the Construction Manager's sole, exclusive and complete compensation for performance of Basic Services, including, without limitation, all costs and expenses, of any kind, incurred by Construction Manager or its Subconsultants in performance of Basic Services.

**5.1.2 Basic Services Fees.** Construction Manager's Basic Services Fees for performance of Basic Services shall be as follows: **[Check appropriate box(es)]**:

.1  a Fixed Basic Services Fee for all Basic Services of \$ ;

.2  the product of (1) the actual hours expended by Construction Manager's and its Subconsultants' personnel in performance of Basic Services multiplied times (2) the applicable Hourly Rates for such personnel, the total of which shall not exceed for all Basic Services the cumulative total fee agreed upon for Basic Services as demonstrated in Exhibit 'N' (Staffing Fee Schedule).



.3  a Basic Services Fee based on a combination of compensation comprised of both Fixed Basic Services Fees and Maximum Hourly Fees for each of the following categories of Basic Services:

Basic Services Description: Basic Services Fees:

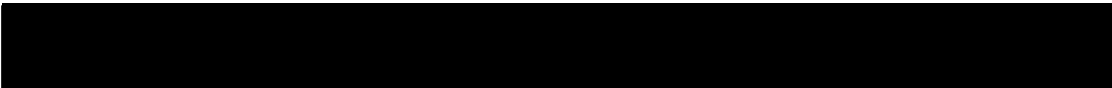
- (1) Construction Management Staffing :
  - ✗ Not to Exceed Fee: \$ 4,998,579.00
  - ✗ Maximum Hourly Fee: \$(see Exhibit C);
- (2) CM Subconsultants
  - ✗ Fixed Basic Services Fee: \$923,466
  - ✗ Maximum Hourly Fee: \$(see Exhibit C)
- (3) CM Services Allowance:
  - ✗ Not to Exceed Allowance: \$ 500,000.00
  - ✗ Maximum Hourly Fee: \$ (see Exhibit C);
- (4) Reimbursable Costs:
  - ✗ Not to Exceed Reimbursable Costs: \$50,000.00

**5.1.3 Guaranteed Amounts.** An amount agreed to by County and Construction Manager pursuant to Paragraph 5.1.2, above, as a Fixed Basic Services Fee or Maximum Hourly Fee represents the County's maximum liability to Construction Manager for the complete performance by Construction Manager and its Subconsultants of the Basic Services or portion of Basic Services covered by such Basic Services Fees. Subject only to Construction Manager's rights under Section 5.2, below, any fees, costs or expenses, of any kind, incurred by Construction Manager or a Subconsultant, for performance of Basic Services or a portion of Basic Services for which a Fixed Basic Services Fee or Maximum Hourly Fee has been agreed to in Paragraph 5.1.2, above, that if charged to County would exceed the amount of such Fixed Basic Services Fee or Maximum Hourly Fee shall be deemed incurred at Construction Manager's Own Expense.

**5.2 REIMBURSABLE EXPENSES**

**5.2.1 Exclusive List.** Reimbursable Expenses include, and are limited to, a reasonable amount for the following costs and expenses if and to the extent they are incurred and paid by Construction Manager in the performance of Basic Services or Additional Services and not as a result of the negligence, willful misconduct or violation of an Applicable Law by Construction Manager or its Subconsultants or the failure by Construction Manager to comply with the requirements of this Agreement:

.1 if approved in advance by County, mileage for vehicle travel (at the rates set forth in the Reimbursable Expenses Schedule - Exhibit "H" attached hereto), air travel (coach fare only) and related subsistence (meals and lodging at standard business accommodation rates) for travel from Construction Manager's or a Subconsultant's place of business (whether located within or outside the County of Riverside) to a point of destination outside the County or Riverside, but excluding the following: (1) travel and related subsistence to or from the County's offices or the Site for purposes of conducting



inspections, observations or attending meetings that are part of Basic Services; (2) travel to and from residences to the Construction Manager's or a Subconsultant's place of business; and (3) travel to or from Construction Manager's or a Subconsultant's place of business located outside the County of Riverside to a location within the County of Riverside;

.2 printing and reproduction (paper and electronic) of documents, at the agreed rates set forth in the Reimbursable Expenses Schedule - Exhibit "H" attached hereto, that under the terms of this Agreement are required to be delivered to County or that County requests or approves be provided to another member of the Project Team (by way of example, without limitation, costs of printing or reproduction for internal uses by, or for copies transmitted between or among, Construction Manager and/or its Subconsultants are not reimbursable);

.3 fees for permits or approvals of Governmental Authorities paid for by Construction Manager on behalf of County as requested by County; and

.4 costs listed in Subparagraphs 5.2.1.1 through 5.2.1.3, above, incurred and paid by Subconsultants in the performance of Basic Services or Additional Services; provided that (1) such costs are due and payable by Construction Manager pursuant to terms of a contract approved by County pursuant to Section 1.6, above; (2) such costs are not included in or covered by any fixed fee agreed to by the Subconsultant under the terms of the Subconsultant's contract; and (3) such costs are not in excess of any not-to-exceed amount applicable thereto under the terms of the Subconsultant's contract.

**5.2.2 Approval Limitations.** Reimbursable Expenses shall not exceed, either individually or in the aggregate, the limits set forth in the Reimbursable Expenses Schedule - Exhibit "H" attached hereto without the prior written approval of County. Reimbursable Expenses incurred without such approval shall be deemed incurred at Construction Manager's Own Expense.

**5.2.3 Mark Ups.** Neither the Construction Manager nor any Subconsultant shall include or charge any markup or multiplier upon any Reimbursable Expense, save and except for such markups or multipliers as may be permitted, if at all, by the terms of the Reimbursable Expenses Schedule - Exhibit "H" attached hereto.

**5.2.4 Expense Records.** In addition to Construction Manager's obligations under Section 6.3, below, accurate and detailed records of Reimbursable Expenses shall be maintained by Construction Manager in an orderly manner on the basis of generally accepted accounting practices and shall be available at Construction Manager's office (or at County's request, shall be brought by Construction Manager to County's offices) for inspection, auditing and/or copying by County and its representatives pursuant to Article 7, below.

**5.3 ADDITIONAL SERVICES COMPENSATION**

**5.3.1 Additional Services Compensation.** Construction Manager shall be paid a total Additional Services Compensation for performance of Additional Services comprised exclusively of Additional Services Fees plus authorized Reimbursable Expenses. Additional Services Compensation constitutes the Construction Manager's sole, exclusive and complete compensation for Additional Services, including, without limitation, all costs and expenses, of any kind, incurred in connection with Construction Manager's and its Subconsultants' performance of Additional Services.

**5.3.2 Additional Services Fees.**

.1 **Authorization.** Prior to performance of an Additional Service, Construction Manager and County shall attempt in good faith to negotiate terms for Additional Services Fees on the

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basis of either: (1) a lump sum price; or (2) actual hours expended multiplied times the Hourly Rates for the personnel involved in providing such Additional Service as set forth in the Hourly Rates Schedule - Exhibit "C" attached hereto, not-to-exceed an agreed maximum amount. In addition to County's rights under Section 5.6, below, if the parties are unable to agree, then the County shall have the right, without limitation, to direct in writing that Construction Manager perform the Additional Services based on actual hours expended at the agreed Hourly Rates, without a not-to-exceed amount. Additional Services performed without prior written authorization pursuant to this Paragraph 5.3.2 or written direction pursuant to Section 5.6, below, shall be deemed performed at Construction Manager's Own Expense.

**.2 Hourly Rates.** Compensation for Additional Services authorized by County to be performed on an hourly basis (with or without an agreed not-to-exceed amount) shall be computed based on the Hourly Rates.

**5.3.3 Direct Engagement.** County reserves the right, without thereby being considered in breach of this Agreement, to contract for the performance of Additional Services by others.

#### **5.4 HOURLY RATES**

Hourly Rates for Basic Services and Additional Services performed on an hourly basis are set forth in the Hourly Rates Schedule - Exhibit "C" attached hereto. Hourly Rates shall remain fixed for the duration of Construction Manager's performance of this Agreement.

#### **5.5 RELEASE FOR PRIOR SERVICES**

Construction Manager waives and releases County from any obligation or liability for payment of money or compensation for services, of any kind, performed and for costs or expenses, of any kind, incurred, prior to the Effective Date.

#### **5.6 DISPUTES**

If a good faith dispute arises as to whether a service is Basic Services or Additional Services or whether an expense is reimbursable as a Reimbursable Expense, Construction Manager will nevertheless promptly perform such service and pay such expense, if requested to do so by County in writing, pending resolution of such dispute. Neither County's request, Construction Manager's performance nor County's payment therefor or thereof will constitute a waiver on the part of County or Construction Manager of their respective rights or defenses with respect to the appropriate classification of such service or expense, which rights and defenses shall remain subject to determination in accordance with Article 11, below.

#### **5.7 NO WAIVER OR RELEASE OF RIGHTS**

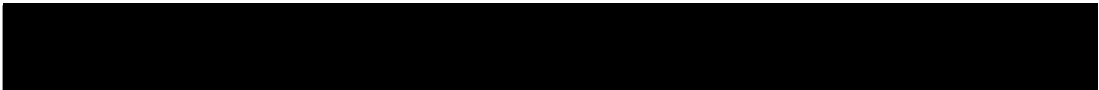
Neither authorization nor payment by County of any amount for Basic Services, Additional Services or Reimbursable Expenses shall be interpreted as a waiver, release or settlement of any rights or claims that County may have: (1) for Losses resulting from the fault, negligence or willful misconduct of the Construction Manager or its Subconsultants or the breach by Construction Manager of an obligation under this Agreement; or (2) to recoup and recover from Construction Manager amounts paid by County that were not in fact due and owing to Construction Manager under the terms of this Agreement at the time they were paid.

### **ARTICLE 6 PAYMENTS TO CONSTRUCTION MANAGER**

Edition: August, 2013

INITIALS 

Vanir Construction Management & County of Riverside - East County Detention Center FM0811000265



**6.1 INVOICES FOR PAYMENT**

On the 1<sup>st</sup> day of each month, Construction Manager shall submit to County an accurate and complete Invoice for Payment, using the Invoice for Payment Form - Exhibit "I" attached hereto, signed by Construction Manager and requesting payment for the preceding thirty (30) Day period, which is prepared in accordance with the following requirements:

**6.1.1 Basic Services Fees.** Amounts included by Construction Manager in its Invoices for Payments for Basic Services Fees on account of Basic Services or any portion of Basic Services for which a Fixed Basic Services Fee or a Maximum Hourly Fee has been agreed to in Section 5.1, above, shall not exceed a prorated portion of the agreed Basic Services Fees based on the product of (1) the percentage of completion of such Basic Services that has been actually achieved by Construction Manager, multiplied times (2) the agreed Fixed Basic Services Fee or Maximum Hourly Fee applicable to such Basic Services; and provided further, that where such Basic Services or portion of Basic Services are to be performed in Phases, such prorated portion shall be proportionate to and shall not exceed for any Phase of such Basic Services or portion of Basic Services, the percentage of such Basic Services Fees that is assigned to such Phase in the Payment Schedule - Exhibit "J" attached hereto.

**6.1.2 Additional Services Fees.** Construction Manager's Invoice for Payment shall include amounts for Additional Services Fees earned for the proper performance of Additional Services authorized pursuant to Article 3 and Article 5, above. Each item of Additional Services shall be separately itemized, in accordance with the following methods of calculation, as applicable:

**.1 Lump Sum:** If the agreed Additional Services Fees are based on a lump sum price, by taking the County's Good Faith Determination of the percentage of the Additional Services properly completed and multiplying that percentage times the agreed lump sum price for such Additional Services and subtracting therefrom payments previously made on account thereof.

**.2 Hourly/Not-to-Exceed:** If the Additional Services Fees are based on an hourly compensation, by taking the number of hours of Additional Services performed during the thirty (30) Day period covered by the Invoice for Payment and multiplying those hours times the applicable Hourly Rates for the personnel involved in providing such Additional Service; provided, however, that if the parties have agreed to a not-to-exceed amount for such Additional Services Fees, then under no circumstances shall the total of the amounts paid and payable by County for such Additional Services Fees at any time exceed a pro rated share of the agreed not-to-exceed amount for such Additional Services based on County's Good Faith Determination of the percentage of such Additional Services properly completed in accordance with this Agreement multiplied times the agreed not-to-exceed amount.

**6.1.3 Reimbursable Expenses.** Construction Manager's Invoice for Payment shall include amounts for authorized Reimbursable Expenses incurred and paid by Construction Manager during the thirty (30) Day period covered by the Invoice for Payment that have not been previously reimbursed by County. Reimbursable Expenses associated with Basic Services and Additional Services shall be separately itemized. Reimbursable Expenses for Additional Services shall be further separately itemized to correspond to the Additional Service for which they were incurred and paid.

**6.2 PAYMENT SCHEDULE FOR BASIC SERVICES**

The County's obligation for payment of Basic Services Fees for any Phase of Basic Services shall under no circumstances exceed a pro rated share of either the lump sum amount or Maximum Hourly Fee, as applicable, that County is obligated to pay for Basic Services Fees under Section 5.1, above. Such pro rated share shall be calculated based on the percentages assigned to each Phase of Basic Services in the Payment Schedule - Exhibit "J" attached hereto. In cases where only a portion of a Phase is

completed, the amount payable shall not exceed County's Good Faith Determination of the percentage of Basic Services completed within that Phase expressed as a separate percentage of the percentage of Basic Services allocated in the Payment Schedule to that Phase.

### **6.3 ACCOMPANYING DOCUMENTATION**

Each Invoice for Payment shall be accompanied by the following:

**6.3.1** in the case of Basic Services and Additional Services performed and compensated on an hourly (as opposed to lump sum fee) basis, detailed time summaries for Basic Services and Additional Services performed during the period of time covered by the Invoice for Payment that are broken down by time keeper, task and time expended (block billings are not permitted) and copies of all time sheets prepared by any time keeper who performed any part of the Basic Services and Additional Services that are the subject of the Invoice for Payment and that reflect or record such Basic Services and Additional Services;

**6.3.2** copies each of the invoices, receipts and other documentation verifying the amounts of Reimbursable Expenses for which reimbursement is sought in the Invoice for Payment, along with a tally of all Reimbursable Expenses requested in the Invoice for Payment the sum of which totals the total amount of Reimbursable Expenses for which reimbursement is sought by Construction Manager in the Invoice for Payment;

**6.3.3** conditional waivers and releases of stop notice and bond rights executed by Construction Manager and its Subconsultants, of every Tier, using the Release Forms - Exhibit "K" attached hereto, conditionally releasing to the fullest extent allowable by Applicable Laws all stop notice and bond rights for all services performed and costs incurred during the period of time covered by the then-current Invoice for Payment;

**6.3.4** unconditional waivers and releases of stop notice and bond rights executed by Construction Manager and its Subconsultants, of every Tier, using the Release Forms - Exhibit "K" attached hereto unconditionally releasing to the fullest extent allowable by Applicable Laws all stop notice and bond rights for all services performed and costs incurred during the period of time covered by the Invoice for Payment immediately preceding the current, pending Invoice for Payment; and

**6.3.5** such other documentation substantiating Construction Manager's or its Subconsultants' charges or time as may be reasonably requested by County.

### **6.4 REVIEW AND PAYMENT**

**6.4.1 Review by County.** County shall, within fourteen (14) Days after receipt of an Invoice for Payment prepared and submitted in accordance with this Agreement, notify Construction Manager if the Invoice for Payment is approved or rejected, in whole or in part, along with an explanation of the reason(s) for any disapproval.

**6.4.2 Payment by County.** Payment of undisputed amounts included in an Invoice for Payment prepared and submitted in accordance with this Agreement shall be made by County monthly within thirty (30) Days after receipt by County of the Invoice for Payment requesting payment that is prepared and submitted in accordance with this Agreement.





## 6.5 PAYMENT DISPUTES

Without limitation to County's rights under Section 6.6, below, in the event there is a good faith dispute over a request for payment included in an Invoice for Payment, County shall have the right to either: (1) make all or part of such disputed payment to Construction Manager without prejudice to County's right to contest the amount so paid; or (2) withhold only the amount of such payment as to which County makes a Good Faith Determination that there is a dispute and provide to Construction Manager written notice of the reason(s) for such withholding. County and Construction Manager shall use their good faith efforts to attempt to resolve their dispute as quickly as practicable under the circumstances. Construction Manager shall not be entitled to terminate this Agreement or suspend performance of its services hereunder on account of such nonpayment provided that County makes payment of all undisputed sums. If County chooses to withhold payments under Clause (2) of this Section 6.5 and if it is determined subsequently that County's withholding was wrongful, County shall pay such amount to Construction Manager plus interest at the Interest Rate from and after the date that County defaulted in the performance of its payment obligation under this Agreement. If County chooses to proceed under Clause (1) of this Section 6.5 and it is subsequently determined that County overpaid Construction Manager, Construction Manager shall refund to County the amount of such payment plus accrued interest computed at the Interest Rate from the date of such overpayment until refunded.

## 6.6 WITHHOLDING BY COUNTY

County shall have the right, after written notice to Construction Manager, to withhold from payment to Construction Manager 150% of the amount of any Loss resulting or threatened as a result of the negligence, willful misconduct or violation of Applicable Laws by Construction Manager or a Subconsultant or a failure by Construction Manager to perform an obligation under this Agreement. Such withholding shall not constitute a final determination or waiver of any rights or liabilities of County or Construction Manager with respect to responsibility for such Loss, which rights and liabilities shall remain subject to determination in accordance with Article 11 of this Agreement. The foregoing right of withholding is in addition to, and not a limitation upon, the County's other rights and remedies provided for under this Agreement or Applicable Laws.

## 6.7 LIENS, STOP NOTICES, CLAIMS

Except as otherwise provided herein, Construction Manager shall not permit to be created or to remain undischarged any lien, encumbrance, stop notice, claim or charge (collectively, "lien") which arises out of, or relates to, the provision by Construction Manager or its Subconsultants of any services or things under this Agreement upon the property of County, the construction fund of County, or the income from any such property or construction fund, or any part thereof, or to suffer any other matter or thing whereby the estate, rights and interest of County in the Project property or construction fund, or any part thereof, might be impaired. If any such lien is filed, then within thirty (30) Days after notice of filing thereof Construction Manager shall cause the same to be fully discharged of record, released and removed by any lawful means available, such as, but not limited to, payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Construction Manager shall fail to cause such lien to be so discharged within the period aforesaid, then, in addition to any other right or remedy, County may, but shall not be obligated to, discharge the lien by any means, including, but not limited to, withholding amounts pursuant to Section 6.6, above, paying the amounts claimed to be due (including, without limitation, interest and attorney's fees claimed due), bonding or any other means that County determines, in its sole and absolute discretion, appropriate. Any Loss incurred by County as a result of Construction Manager's failure to comply with its obligations under this Section 6.7 shall be paid by Construction Manager to County on demand. Construction Manager shall be excused from its obligations under this Section 6.7 with respect to, but only to the extent of, amounts included in a lien that are unpaid to the claimant upon the lien as the

direct result of County's breach of its payment obligations related to that lien to Construction Manager under this Agreement.

## ARTICLE 7 RECORDS AND FILES

### 7.1 FINANCIAL MANAGEMENT

Construction Manager shall set up and exercise accounting and control systems for the proper financial management of its performance under this Agreement that are satisfactory to County, comply with the prevailing custom and practice for similar projects and afford County the ability to verify all charges and duplicate all calculations made by the Construction Manager and Subconsultants.

### 7.2 RECORD KEEPING

**7.2.1 Books and Records.** Construction Manager shall keep full and detailed books and records concerning the Project, including, without limitation, all documents (including, all hard copies and computer readable data, if it exists) that comprise or relate or refer to any of the following: (1) agreements, contracts, proposals, commitments, invoices, billings, statements, receipts, checks, certificates, releases, waivers, plans, specifications, notes, schedules, reports, studies, test data, approvals, permits, applications, diaries, logs, photographs, videos, shop drawings, samples, product data, job reports, change orders, field orders, directives, orders, bulletins, transmittals, requests for information, addenda, receipts, vouchers, correspondence, memoranda, messages, minutes, accounting records, job files, settlement agreements, and general ledgers; (2) any charge, cost or expense for which Construction Manager seeks reimbursement or payment by County as part of any Invoice for Payment, Claim or other demand; and (3) any other documents that County, in its reasonable judgment, deems relevant to the Project.

**7.2.2 Maintenance and Retention.** Construction Manager shall at all times maintain such books and records in an organized and systematic form that allows for reasonably easy access and review and shall retain and preserve such books and records for a period of ten (10) years after the later of either final payment to Construction Manager under this Agreement or Final Completion of the Project, or for such longer period as may be required by Applicable Laws.

### 7.3 INSPECTION, PRODUCTION AND AUDITING

Construction Manager shall allow County and the auditor for the State of California (and their respective authorized representatives, auditors, and attorneys), not later than the third business day after written notice to Construction Manager, full access at Construction Manager's offices nearest to the Project to inspect, audit and copy any or all of Construction Manager's books and records as described in Section 7.2, above. Construction Manager shall, at Construction Manager's Own Expense, furnish facilities and staff assistance for, and cooperate fully with, such inspection or audit. Audits by the County and the auditor for the State of California may be conducted jointly or separately. Upon request, Construction Manager shall provide reproducible copies of such books and records for reproduction by or on behalf of the person conducting the audit. Except as otherwise provided in Section 7.4, below, such reproduction shall be at the expense of the entity conducting the audit. The audit rights provided for under this Section 7.3 may be exercised at any time, and as often, before or after Final Completion, as County or the auditor for the State of California deems, in its sole and absolute discretion, necessary.

### 7.4 NONCOMPLIANCE BY CONSTRUCTION MANAGER

**7.4.1 Cost of Audit.** If an inspection or audit pursuant to Section 7.3, above, discloses that

[REDACTED]

any amount (other than amounts permitted under the terms of this Agreement to be charged by Construction Manager as lump or fixed fee charges) cannot be verified due to a failure by Construction Manager or any Subconsultant to comply with this Article 7, has been improperly, inaccurately or excessively charged to County by Construction Manager or any Subconsultant or has been overpaid by County, and if the total of such amounts for any calendar year audited is five percent (5%) or more of the total amount (exclusive of amounts permitted under the terms of this Agreement to be charged by Construction Manager as lump or fixed fee charges) invoiced to County during such year, then Construction Manager shall pay, at Construction Manager's Own Expense, 100% of the actual cost to County and/or the State of California of such inspection or audit and any resulting report. If such inspection, audit or report is by County using in-house staff, then such actual cost to County shall be computed on the basis of two (2) times the direct payroll of the staff completing such inspection, audit or report.

**7.4.2 County Remedies.** Without limitation to any of County's rights or remedies for recovery or withholding of any amounts from Construction Manager as may be permitted by Applicable Laws or elsewhere in this Section 7.4 or this Agreement, if an inspection or audit pursuant to Section 7.3, above, discloses that an amount has been overpaid by County, then County shall have the right to withhold such amount from any payments due to Construction Manager or if no payments are due Construction Manager shall immediately reimburse such amount to County. Amounts overpaid by County shall earn interest at the Interest Rate from the date of overpayment until the date reimbursed by Construction Manager to County.

**7.4.3 Withholding.** In addition, and without limitation upon any of the other provisions for withholding of payment that are set forth in this Section 7.4 or elsewhere in this Agreement, County shall have the right to withhold from any payment to Construction Manager an additional sum of up to ten percent (10%) of any amount claimed due by Construction Manager until (other than amounts permitted to be charged by Construction Manager as lump or fixed fee charges) Construction Manager has fully complied with any outstanding and unsatisfied request for performance by Construction Manager of any obligation under this Article 7. Upon Construction Manager's full compliance, such sum withheld under this Paragraph 7.4.3 shall be released to Construction Manager.

**7.4.4 Legal Proceedings.** Construction Manager's compliance with the requirements of this Article 7 shall be a condition precedent to maintenance by Construction Manager of any legal action or arbitration against County relating to Construction Manager's or County's performance under or related to this Agreement.

## **7.5 SUBCONSULTANTS**

Construction Manager shall ensure that the provisions of this Article 7 are included in all contracts entered into by Subconsultants, of every Tier, who perform services for the Project; provided, however, that Construction Manager shall have the right to limit the scope of a Construction Manager's obligation to allow for inspection or audit of books and records concerning actual costs of performance to costs that are related to: (1) costs of Subconsultant's administering its performance under its contract with Construction Manager for the Project; (2) services that are performed on an hourly or cost reimbursement basis; (2) Additional Services; (3) cost or expenses that are payable on a reimbursement basis; and (4) Claims.

**ARTICLE 8  
DEFAULT, TERMINATION, SUSPENSION**

**8.1 TERMINATION BY COUNTY FOR CAUSE**

**8.1.1 Default by Construction Manager.** Construction Manager shall cure any default in performance of its obligations under this Agreement within two (2) Days after receipt of written notice from County; provided, however, that if the breach cannot reasonably be cured within such time, then Construction Manager will commence to cure the breach within two (2) Days and will diligently and continuously prosecute such cure to completion within a reasonable time, which shall in no event be later than ten (10) Days after receipt of such written notice. Nothing herein shall be interpreted as obligating County to give an opportunity to cure in the case of an emergency or if the default is of the type that County determines, in good faith, cannot be cured, or cannot be fully cured, within the time periods set forth in this Section 8.1.

**8.1.2 Remedies Upon Default.** In the event of any default by Construction Manager, including, without limitation, a default that Construction Manager fails to cure within the time periods set forth in Paragraph 8.1.1, above, then County may by written notice to Construction Manager, effective upon Construction Manager's receipt of such notice or upon such later date as may be set forth in such notice, pursue any remedies available under Applicable Laws, including, without limitation, the following:

**.1 Take-Over.** County may, without terminating this Agreement, terminate or discontinue the Construction Manager's performance and delete, take over or arrange for performance by others of some or all of the Basic Services and Additional Services, reserving to itself all rights to recover all Losses, including, without limitation, any Losses related thereto.

**.2 Termination.** County may terminate this Agreement upon written notice, reserving to itself all rights to recover all Losses, including, without limitation, all Losses related thereto.

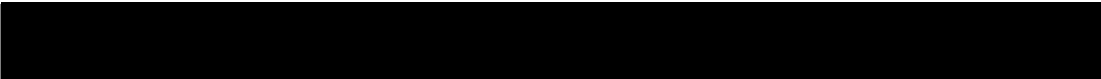
**8.1.3 Rights Cumulative.** All of County's rights and remedies under this Agreement are cumulative and shall be in addition to those rights and remedies available under Applicable Laws. No termination or other action taken by County after exercise of its rights under this Article 8 shall prejudice any other rights or remedies of County provided by Applicable Laws or by this Agreement.

**8.1.4 Disability, Insolvency.** In addition to the other rights granted to County under this Agreement or Applicable Laws, County shall have the right to terminate this Agreement for default by giving seven (7) days written notice to Construction Manager, if: (1) Construction Manager is an individual and should die or be adjudged incompetent; (2) Construction Manager attempts to assign this Agreement; (3) a petition of bankruptcy is filed by Construction Manager or Construction Manager is adjudicated or admitted to be a bankrupt in connection with an involuntary petition of bankruptcy filed against Construction Manager; (4) Construction Manager should make a general assignment for the benefit of creditors; or (5) a receiver should be appointed on account of Construction Manager's insolvency.

**8.1.5 Construction Manager Obligations.** Upon Construction Manager's receipt from County of notice of County's exercise of any of its rights under Paragraph 8.1.2, above, Construction Manager shall, unless the notice directs otherwise, do the following:

**.1** immediately discontinue the performance of Basic Services and Additional Services to the extent specified in the notice;

**.2** provide to County a description, in writing, no later than seven (7) Work Days after receipt of the notice of termination, of all contracts with Subconsultants that are outstanding,



including, without limitation, with respect to each such contract separately, the terms of the original price, payments made to date, the balance owing, the status of the services performed and any outstanding withholding of funds or default, and a copy of the contract and any written changes, amendments or modifications thereto, together with such other information as County may determine necessary in order to decide whether it is in County's best interests to accept assignment of, or request Construction Manager to terminate, the contract; and

.3 thereafter only perform such Basic Services and Additional Services as may be necessary to complete the portion of the Basic Services and Additional Services not terminated, taken over or discontinued.

**8.1.6 Completion by County.** In the event County exercises its rights under Paragraph 8.1.2, above, County shall have the further right, without releasing Construction Manager from liability for failure to fulfill this Agreement, to proceed to complete the Basic Services and Additional Services by any means that County determines is expedient and withhold all or a portion of the monies, if any, owing to Construction Manager until County has completed such Basic Services and Additional Services.

**8.1.7 Payment to Construction Manager.**

.1 **Terminated Services.** With respect to any or all Basic Services and Additional Services that are terminated, discontinued or taken over by County pursuant to an exercise by County of its rights under Paragraph 8.1.2, above, and without limitation to County's other rights under this Agreement or Applicable Laws: (1) if the Losses to County, whether incurred or threatened, arising out of any default by Construction Manager (whether or not such default was the subject of the County's notice of default) or County's exercise of its remedies for default by Construction Manager, exceed the amount of Basic Services Compensation and Additional Services Compensation calculated pursuant to Sections 6.1 and 6.2, above, that was earned by Construction Manager for such Basic Services and Additional Services performed up to, and not beyond, the effective date of such termination, discontinuance or take over by County, then Construction Manager shall be liable to County for the difference and shall promptly remit same to County; or (2) if the sum of such Losses is less than the amount of such Basic Services Compensation and Additional Services Compensation, then County shall pay the difference to Construction Manager within forty-five (45) Days after receipt by County of an Invoice for Payment prepared in accordance with this Section 8.1 and Sections 6.1 through 6.3, above, requesting payment of such Basic Services Compensation and Additional Services Compensation.

.2 **Continuing Services.** In the event of a partial termination, discontinuance or take over by County pursuant to an exercise by County of its rights under Paragraph 8.1.2, above, and without limitation to County's other rights under this Agreement or Applicable Laws: (1) with respect to that portion of Basic Services or Additional Services that is not terminated, discontinued or taken over by County, County shall make a Good Faith Determination of an adjustment in the Basic Services Compensation and Additional Services Compensation under this Agreement to reflect the reduction in the scope of Basic Services and Additional Services remaining to be performed by Construction Manager; and (2) Construction Manager shall continue performance of such Basic Services and Additional Services and shall be paid by County therefor in accordance with the terms of this Agreement.

.3 **Conversion.** In the event a termination, discontinuance or take over by County for cause pursuant to this Section 8.1 is determined to be wrongful, Construction Manager's right to payment or recovery shall be governed by the provisions of Subparagraphs 8.2.2.1 through 8.2.2.3, below, in lieu of any other rights, remedies or recovery provided for by Applicable Laws.

## 8.2 TERMINATION WITHOUT CAUSE

**8.2.1 Termination for Convenience.** Upon at least three (3) Days' written notice to Construction Manager prior to the effective date of an exercise of a right under this Section 8.2, County shall have the right, in its sole and absolute discretion and without cause and for its convenience, to terminate, discontinue or take over all or any portion of this Agreement or Construction Manager's performance under this Agreement. Upon receiving such notice, Construction Manager shall, unless the notice directs otherwise, take the actions required by Paragraph 8.1.5, above.

### 8.2.2 Payment to Construction Manager.

**.1 Terminated Services.** With respect to any or all Basic Services and Additional Services that are terminated, discontinued or taken over by County pursuant to Paragraph 8.2.1, above, Construction Manager shall, within seven (7) Days after exercise by County of a right to terminate, discontinue or take over pursuant to Paragraph 8.2.1, above, submit to County an Invoice for Payment prepared in accordance with Sections 6.1 through 6.3, above, for the amount of Basic Services Compensation and Additional Services Compensation that was earned by Construction Manager for such Basic Services and Additional Services performed up to, and not beyond, the effective date of such termination, discontinuance or take over by County. Without limitation to County's rights under Sections 6.5 and 6.6, above, within forty-five (45) Days after receipt by County of an Invoice for Payment prepared in accordance with this Section 8.2, County shall pay to Construction Manager the amount, if any, owing to Construction Manager under this Paragraph 8.2.2.

**.2 Continuing Services.** In the event of a partial termination, discontinuance or take over by County pursuant to an exercise by County of its rights under Paragraph 8.2.1, above, and without limitation to County's other rights under this Agreement or Applicable Laws: (1) with respect to that portion of Basic Services or Additional Services that is not terminated, discontinued or taken over by County, County shall make a Good Faith Determination of an adjustment in the Basic Services Compensation and Additional Services Compensation under this Agreement to reflect the reduction in the scope of Basic Services and Additional Services remaining to be performed by Construction Manager; and (2) Construction Manager shall continue performance of such Basic Services and Additional Services and shall be paid by County therefor in accordance with the terms of this Agreement.

**.3 Exclusive Remedy.** Construction Manager agrees to accept the payments provided for under this Paragraph 8.2.2 as its sole and exclusive right and remedy in lieu of all other rights and claims that Construction Manager may have under this Agreement or Applicable Laws for recovery of Losses caused or claimed to be caused by County's termination, discontinuance or take over of this Agreement, including, without limitation, Losses associated with lost profits, lost opportunity, and other consequential damages.

## 8.3 SUSPENSION BY COUNTY

County shall have the right to order, in writing, a suspension of performance of all services by Construction Manager without cause and for County's convenience. If services are entirely suspended by written order of County for a continuous period of more than sixty (60) consecutive Days, and such suspension is not due to a breach of this Agreement by Construction Manager or the negligence, willful misconduct or violation of an Applicable Law by Construction Manager or a Subconsultant, and if County thereafter requests in writing that Construction Manager resume performance following such suspension, then Construction Manager shall be entitled to payment as additional compensation of any unavoidable direct, out-of-pocket costs payable by Construction Manager or Subconsultants to third-party vendors of supplies as a result of such suspension. No other adjustment to Construction Manager's compensation and no other recovery by Construction Manager or any Subconsultant of Losses associated with such

suspension shall be permitted.

#### **8.4 TERMINATION BY CONSTRUCTION MANAGER**

**8.4.1 Construction Manager's Remedies.** If County fails within the applicable time period for payment provided for in Article 6, above, to make payment of sums that are not in good faith disputed by County and fails to cure such failure within thirty (30) Days after receipt of written notice of nonpayment from Construction Manager, then, upon an additional ten (10) Days' written notice to County of intent to terminate, Construction Manager may terminate this Agreement. The foregoing constitutes the Construction Manager's sole and exclusive right to terminate this Agreement for any reason, including, but not limited to, any breach by County.

**8.4.2 Payment to Construction Manager.** In the event of a termination by Construction Manager pursuant to this Section 8.4, Construction Manager's right to further payment or recovery shall be governed by the provisions of Subparagraphs 8.2.2.1 through 8.2.2.3, above, in lieu of any other rights, remedies or recovery provided for by Applicable Laws.

### **ARTICLE 9 INDEMNIFICATION**

#### **9.1 INDEMNIFICATION BY CONSTRUCTION MANAGER**

**9.1.1 Indemnification Obligation.** To the fullest extent permitted by Applicable Laws, Construction Manager agrees to defend (through legal counsel reasonably acceptable to County), indemnify, and hold harmless County, Board of Supervisors, and each of their respective members, officers, employees, agents, and volunteers ("Indemnitee(s)"), and each of them, from any and all Losses that arise out of or relate to any act or omission constituting negligence, breach of contract or willful misconduct on the part of Construction Manager or its Subconsultants, or their respective employees, agents, representatives, or independent contractors. The Indemnitees shall be entitled to the defense and indemnification provided for hereunder, regardless of whether the Loss is in part caused or contributed to by the acts or omissions of an Indemnitee or any other person or entity; provided, however, that nothing contained herein shall be construed as obligating Construction Manager to indemnify and hold harmless any Indemnitee to the extent not required under the provisions of Paragraph 9.1.2, below.

**9.1.2 Limitations on Indemnity Obligation.** Without affecting the rights of County under any other provision of this Agreement, Construction Manager shall not be required to indemnify or hold harmless an Indemnitee for a Loss due to that Indemnitee's negligence, recklessness or willful misconduct; provided, however, that such negligence, recklessness or willful misconduct has been determined by agreement of Construction Manager and Indemnitee or has been adjudged by the findings of a court of competent jurisdiction.

**9.1.3 Subconsultant Indemnity Agreements.** Construction Manager agrees to obtain or cause to be obtained executed defense and indemnity agreements with provisions identical to those set forth in this Section 9.1 from each and every Subconsultant, of every Tier.

**9.1.4 No Limitation by Insurance.** Construction Manager's indemnification obligations under this Agreement shall not be limited by the amount or type of damages, compensation or benefits payable under any policy of insurance, workers' compensation acts, disability benefit acts or other employee benefit acts.

**9.1.5 Enforcement.** The Indemnitees shall be entitled to recover their attorneys' fees, costs and expert and consultant costs in pursuing or enforcing their right to defense and/or indemnification

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under this Agreement.

**ARTICLE 10  
INSURANCE**

**10.1 CONSTRUCTION MANAGER'S INSURANCE**

**10.1.1 Required Coverages.** Prior to the commencement of any services, Construction Manager shall, at its own expense, purchase from, and maintain with, a company or companies lawfully authorized and approved by Governmental Authorities to do business in the jurisdiction in which the Project is located and having an A.M. Best Company rating of no less than A:80, the insurance coverages set forth in this Section 10.1, which coverages shall remain in force throughout Construction Manager's performance of this Agreement and for such longer periods as may be required by this Agreement, unless such requirements are waived, in writing, by the County's Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer, such waiver is only valid for that specific insurer and only for one policy term after which full compliance with this Section 10.1 shall be required. Except as otherwise expressly provided in this Section 10.1, such policies and coverages shall, without limitation, protect Construction Manager from claims which may arise out of, or result from, the Construction Manager's performance of this Agreement, whether such performance be by itself or by any Subconsultant, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and shall comply with the following requirements:

**.1** Commercial General Liability insurance on a form at least as broad as Insurance Services Office ("ISO") Commercial General Liability Coverage "occurrence" form CG20101185 (Form B) or ISO Comprehensive General Liability "occurrence" form acceptable to the County with the Broad Form Comprehensive General Liability Endorsement GLO404 (with no Property Damage Liability exclusions pertaining to loss by explosion, collapse or underground damage), including, without limitation, coverage for bodily injury, sickness, disease, or death of any person, injury to, or destruction of tangible property, including loss of use resulting therefrom, blanket contractual liability coverage (including, without limitation, coverage for the Construction Manager's indemnification obligations set forth in Article 9, above), and including an endorsement amending the aggregate limits to apply on a per location or per project basis, with limits of liability coverages of no less than the following amounts:

\$2,000,000	General Aggregate (Other Than Products-Completed Operations)
\$2,000,000	Products-Completed Operations Aggregate Limit for a period of five (5) years following Final Completion and Acceptance of the Project
\$1,000,000	Personal and Advertising Injury Limit
\$1,000,000	Per Occurrence Limit

**.2** Professional Liability insurance, issued on a "claims made" basis, with limits of liability coverage in the amounts of no less than the following: (1) if the Fixed Limit is \$5 million or less: \$1,000,000 per claim and \$1,000,000 in the annual aggregate; (2) if the Fixed Limit is over \$5 million and \$10 million or less: \$2,000,000 per claim and \$2,000,000 in the annual aggregate; and (3) if the Fixed Limit is over \$10 million: \$3,000,000 per claim and \$3,000,000 in the annual aggregate. Such policy shall provide coverage (including, without limitation, all costs and expenses resulting from the investigation and defense of any claim) for damages from claims for bodily injury or property damage to County or to any third party (including, without limitation, loss of use of damaged and non-damaged property) due to any breach of duty in the performance of professional services. Professional liability coverage shall have an inception date or a retroactive date coinciding with, or prior to, the date of execution of this Agreement or the date of first performance of any services under this Agreement, whichever date is earlier, and coverage shall continue uninterrupted until five (5) years after Final Completion and Acceptance of the entire Project. Coverage for such post-completion period may be provided by renewal or replacement of



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the policy for each of five (5) years or by a five-year extended reporting period endorsement that reinstates the aggregate limit for the extended reporting period. Renewal or replacement policies shall not allow for any advancement of the retroactive date. Any deductible or self-insured retention under the foregoing professional liability policy shall not, except with the approval of County granted or withheld in the County's sole and absolute discretion, exceed \$100,000.

.3 Motor Vehicle Liability insurance issued on an ISO Business Auto Coverage form, including Symbol 1, acceptable to the County with limits of liability coverage of not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage for all owned, hired, and non-owned vehicles.

.4 Workers' Compensation insurance (Coverage A) as prescribed by the laws of the State of California. The Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits of not less than \$1,000,000 per person per accident and shall provide a Borrowed Servant/Alternate Employer Endorsement.

**10.1.2 Notice of Cancellation.** Each policy of insurance shall: (1) be in a form, and with insurers, satisfactory to County; (2) incorporate such endorsements as County may reasonably request; and (3) provide for thirty (30) Days' advance notice to County of non-renewal, material change, cancellation, or potential exhaustion of aggregate limits.

**10.1.3 Additional Insureds.** Construction Manager shall have the following named as Additional Insureds by means of endorsement to its General Liability, Excess (or Umbrella) Liability, and Motor Vehicle Liability policies: (1) the Indemnitees; (2) the persons or entities listed in the Additional Insureds List - Exhibit "L" attached hereto; and (3) all subsidiary companies, corporations, entities, joint ventures, LLC's, or partnerships that are owned, managed or controlled by the entities listed in Clauses (1) or (2) of this Paragraph 10.1.3. Such coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. The "Insured" clause covering Additional Insureds shall: (a) be no more restrictive than the coverage afforded by ISO 2010 11/85 edition; (b) state that the coverage provided to the Additional Insureds is primary and non-contributing with any other insurance available to the Additional Insureds; and (c) require a waiver of subrogation in favor of all Additional Insureds.

**10.1.4 Self Insured Retentions.** Policies of insurance for the coverages described in Paragraph 10.1.1, above, with the sole exception of professional liability insurance, shall not have self insured retentions which exceed \$10,000 per occurrence. All deductibles and self insured retentions on insurance required to be obtained by Construction Manager under this Agreement shall be borne by Construction Manager at its sole expense and without reimbursement by County.

**10.1.5 Certificates of Insurance.** Prior to the commencement of any services under this Agreement, and at any time thereafter upon County's request during the term of this Agreement, Construction Manager shall provide County with written evidence of the required coverages in the form of certificates of insurance with the applicable endorsements (including, without limitation, an endorsement confirming coverage for the Additional Insureds) attached or copies of the policies. County reserves the right to require complete, certified copies of all required insurance policies at any time, including endorsements providing the coverages required by this Agreement.

**10.1.6 Waiver of Subrogation.** For Commercial General Liability and Workers' Compensation insurance, the insurer shall agree to waive all rights of subrogation against the Additional Insureds for Losses arising from activities and operations of an insured in the performance of services under this Agreement.

**10.1.7 Lapse in Coverage.** If Construction Manager or any Subconsultant, for any reason, fails to maintain any insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. County, at its sole option, may thereupon terminate this Agreement and obtain damages from Construction Manager resulting from said breach. Alternatively, County may purchase such coverage (but has no obligation to do so) and, without further notice to Construction Manager, may deduct from sums due to Construction Manager any premium costs advanced by County for such insurance.

**10.1.8 Subconsultants.** Except as otherwise stated in Subconsultant Insurance Requirements - Exhibit "M" attached hereto, Subconsultants shall be required to maintain insurance on the same terms and with the same coverages as required of Construction Manager under this Agreement.

## **ARTICLE 11 DISPUTE RESOLUTION**

### **11.1 RESOLUTION OF DISPUTES**

Disputes between County and Construction Manager shall be resolved by an attempt at non-binding mediation. If non-binding mediation is not successful, then disputes shall be resolved by way of an action filed in the Superior Court of the State of California, in and for the County of Riverside.

### **11.2 GOOD FAITH DETERMINATIONS**

Wherever in this Agreement it is provided that the County may or shall make a determination or decision in the exercise of good faith (including, without limitation, provisions in this Agreement calling for a Good Faith Determination), any such determination or decision that the person exercising such right on behalf of County believes in good faith to be a proper exercise of County's rights and to have a reasonable basis in fact, whether or not such determination is in fact proper, reasonable or correct or adjudged to be so, shall be complied with by Construction Manager without Delay to Construction Manager's performance under this Agreement. However, unless this Agreement expressly provides otherwise, neither such good faith determination or decision nor Construction Manager's compliance therewith shall be interpreted as precluding the Construction Manager from exercising its rights to seek adjudication of its rights in the manner permitted by this Agreement or Applicable Laws.

### **11.3 ATTORNEY'S FEES**

If any legal action is brought in connection with, or related to, the interpretation, performance, or enforcement of this Agreement, including, but not limited to, an action to rescind this Agreement, the prevailing party therein shall be entitled to recover from the other party the prevailing party's actual costs, expenses, and attorneys' fees at trial, and on appeal, including, without limitation, a sum for time expended by in-house attorneys and paralegals. The determination of the "prevailing party" shall be based upon the party who prevails upon the matters actually litigated and shall not be determined solely based on which party receives a net monetary recovery.

## **ARTICLE 12 ROYALTIES, PATENTS, COPYRIGHTS AND TRADE SECRETS**

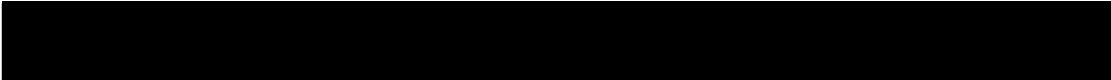
### **12.1 ROYALTIES**

Construction Manager shall pay all royalties and license fees in connection with its performance of this Agreement. Compensation for such royalties and fees is included in Construction Manager's Basic Services Compensation and shall not be separately reimbursed.

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## 12.2 INFRINGEMENT

Construction Manager shall not infringe any United States patent, copyright, trade secret, or other proprietary right for or in any work of authorship, material, product, or any other form of intellectual property, or any part thereof (including, without limitation, software, hardware, service, design or equipment), used or furnished in connection with this Agreement.

## 12.3 NOTICE BY CONSTRUCTION MANAGER

In those instances where Construction Manager has reason to believe that a particular design, process, or product of one or more manufacturers that Construction Manager is directed to use by County would infringe upon any of the rights listed in Section 12.2, above, Construction Manager shall immediately notify County of its belief and the reasons therefor in writing.

## ARTICLE 13 MISCELLANEOUS

### 13.1 GOVERNING LAW

This Agreement shall, without regard to the law of conflicts of laws that may otherwise call for application of the laws of a different jurisdiction, be governed by the laws of the State of California.

### 13.2 HAZARDOUS SUBSTANCES

**13.2.1 Introduction by Construction Manager.** Construction Manager and its Subconsultants shall not cause or knowingly permit, or include in its Design Documents any provision allowing for, any Hazardous Substances to be deposited, stored, disposed, placed, generated, manufactured, buried, refined, transported, treated, discharged, handled, or located on the Site or in Existing Improvements, except as may be specifically authorized in writing by County; provided, however, that Hazardous Substances may be specified for temporary use or storage where reasonably required for, and in quantities appropriate to, the performance of the Work and where the use and storage of such Hazardous Substances is permitted by, and specified to be performed in conformity with, Applicable Laws. Should Construction Manager or a Subconsultant violate the foregoing obligation, Construction Manager shall at its own expense and without limitation to County's other rights or remedies for default immediately: (1) inform County in writing of such event; (2) advise County with respect to any release reporting or notification requirement that may apply as a result of such event; (3) assist County in complying with any such reporting or notification requirement as determined by County; and (4) perform any investigation, remediation, removal, or other response that is necessary or desirable in order to abate or clean up the condition resulting from such event, to the full satisfaction of County and any applicable Governmental Authority. Such Hazardous Substances shall be removed and properly disposed of as soon as they can be accepted at an appropriate disposal facility, and in no event later than sixty (60) Days after such waste is generated, unless a longer time is approved by County.

**13.2.2 Existing Hazardous Substances.** Construction Manager recognizes that Hazardous Substances may exist at or beneath the ground at the Site and that certain waste materials, such as, but not limited to, drill cuttings and drilling fluids, must be handled as if contaminated until a determination as to whether they are Hazardous Substances is made. If the Construction Manager's Basic Services do not include the investigation or assessment of environmental conditions or Hazardous Substances, then in the event Construction Manager or its Subconsultants encounter materials existing or otherwise present at the Site that are reasonably believed to be Hazardous Substances that have not been rendered harmless, Construction Manager and/or Subconsultant shall report the condition to County in writing and County shall be solely responsible for arranging for and paying the costs lawfully to transport, store, treat,

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recycle, dispose of, or otherwise handle the Hazardous Substances present at the Site. If the Construction Manager's Basic Services include the investigation or assessment of environmental conditions or Hazardous Substances, then Construction Manager shall: (1) promptly make a determination whether the materials encountered are Hazardous Substances; (2) promptly advise County of the options and costs for handling, storing and disposing of such materials (whether they are Hazardous Substances or not); (3) appropriately handle, contain and label such materials as are Hazardous Substances in accordance with Applicable Laws; (4) promptly inform County that such handling, containerization and labeling have been performed; and (5) leave the containers on Site in an appropriate designated location for lawful storage and disposal by County. County shall be solely responsible for arranging for and paying the costs to lawfully transport, store, treat, recycle, dispose of or otherwise handle Hazardous Substances generated by Construction Manager's proper performance of its professional services. Should the proper and lawful transportation and disposal of any such materials be required, Construction Manager's responsibilities shall be limited to preparing manifests or related documents for execution by County. In this regard, County shall sign all manifests and bills of lading, and approve similar documents, including subcontracts for disposal activities, that identify County as the generator/owner of any hazardous or contaminated material that is removed from the Site. County shall be solely responsible for notifying all appropriate federal, state, local or other governmental agencies of the existence of any Hazardous Substances on or about the Site or discovered during performance of this Agreement; no such notice shall be given by Construction Manager without prior discussion and approval by County.

### **13.3 NO WAIVER**

A waiver, by either party to this Agreement, of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character. County's approval, acceptance or use of, or payment for, any or part of Construction Manager's services shall not in any way alter Construction Manager's obligations, or waive any of County's rights, under this Agreement.

### **13.4 NO THIRD-PARTY RIGHTS**

Nothing contained in this Agreement is intended to make any person or entity who is not a signatory to this Agreement a third-party beneficiary of any right or obligation created by this Agreement or by operation of Applicable Laws.

### **13.5 EXTENT OF AGREEMENT**

This Agreement represents the entire Agreement between County and Construction Manager for the furnishing of services to the Project, and supersedes all prior negotiations, representations or agreements, either written or oral, and may be amended only by written instrument signed by both County and Construction Manager.

### **13.6 SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon County and Construction Manager and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any monies due or to become due hereunder, nor any claim hereunder, may be assigned by Construction Manager without the prior written consent and approval of County, which may be granted or withheld in County's sole and absolute discretion. County's right and interest in, and any claim under, this Agreement may be assigned by County upon written notice to Construction Manager. County shall have no liability or responsibility to Construction Manager for payment for any services performed or cost incurred after the date of such assignment and notice thereof by County to Construction Manager.



### 13.7 CONFIDENTIALITY

The Construction Manager acknowledges that, in the course of the Construction Manager's employment and performance under this Agreement, the County may make available to the Construction Manager, and the Construction Manager may utilize and may participate in the creation of, proprietary and confidential information, including, without limitation, plans, specifications, projected and actual budgets, construction and development schedules, operating procedures, pricing data, transaction terms, Site-related information, studies (including survey, soil, environmental, structural, topographic and seismic) and other Project information (hereinafter collectively, "Proprietary Information"). The Construction Manager agrees on behalf of itself and its employees, officers, board members and its Subconsultants that all Proprietary Information shall be kept strictly confidential, with such confidentiality requirement to include without limitation the following covenants and obligations: (1) the Proprietary Information shall not be disclosed, either verbally or in writing, to a person or entity that is not related to the Project; (2) the Proprietary Information shall not be disclosed to any person or entity related to the Project other than County except to the extent that such disclosure is essential to the Construction Manager's performance of this Agreement or to the performance by a Project-related person or entity of its Project-related work, services or obligations; (3) Construction Manager shall not publicly reveal any Proprietary Information except to the extent that such disclosure is essential to the Construction Manager's performance of this Agreement or to the performance by a Project-related person or entity of its Project-related work, services or obligations; (4) subject to the provisions of Paragraph 1.7.7, above, Construction Manager shall return all Proprietary Information (including all copies made thereof) to County upon request and in any event within sixty (60) Days after termination or full performance of this Agreement; (5) Construction Manager shall not be deemed the author of any of the Proprietary Information and retains no Intellectual Property Rights in the Proprietary Information; (6) to the extent the Construction Manager provides any Proprietary Information to a Subconsultant, the Construction Manager shall be responsible for obtaining and enforcing a written agreement from each such Subconsultant pursuant to which such Subconsultant agrees to be bound by the terms of this Section 13.7; and (7) in the event that the Construction Manager or any Subconsultant is required, or becomes legally compelled, to disclose any of the Proprietary Information or take any other action prohibited hereby, the Construction Manager will provide County with prompt written notice so that the County may seek a protective order or other appropriate remedy and/or waive in writing compliance with the provisions of this Section 13.7. County shall have full recourse under Applicable Laws in enforcing this Section 13.7, including without limitation the right to seek specific performance and injunctive relief and recover all damages resulting from a violation hereof. Construction Manager shall instruct all of its employees of the foregoing confidentiality obligation.

### 13.8 INDEPENDENT CONTRACTOR

Construction Manager is and shall at all times remain, as to County, a wholly independent contractor. Neither County nor any of its agents shall have control over the conduct of Construction Manager or any of Construction Manager's officers, agents or employees, except as herein set forth. Construction Manager shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of County.

### 13.9 CONSTRUCTION MANAGER'S REPRESENTATIONS

Without limitation to any other covenants, agreements, or representations contained in this Agreement, Construction Manager warrants and represents that: (1) it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the services and perform the obligations required by this Agreement; (2) it is authorized to do business in the State of California; and (3) Construction Manager holds such licenses, if any, that Construction Manager is required to hold in order to enter into this Agreement for performance of the services to be provided by Construction Manager pursuant to this Agreement.

Edition: August, 2013

INITIALS  

Vanir Construction Management & County of Riverside - East County Detention Center FM08110000265



### **13.10 SURVIVAL**

The provisions of this Agreement which, by their nature, involve a right that is to be or may be exercised by or afforded to a party, or an act or obligation that is to be assumed or performed by a party, after the point in time that full performance or termination of this Agreement has occurred, including, without limitation, all provisions relating to warranties, defense and indemnification, confidentiality, audit, insurance, dispute resolution procedures, and ownership of documents, shall survive and remain in full force and effect after either full performance or termination of this Agreement.

### **13.11 SEVERABILITY**

In the event a provision of this Agreement, or portion thereof, is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions or portions shall not be affected, and such remaining provisions or portions shall be enforceable to the fullest extent allowable by Applicable Laws in order to give maximum legal force and effect to those provisions or portions that are not invalid, illegal or unenforceable.

### **13.12 INTERPRETATION**

Construction Manager and County acknowledge that the terms of this Agreement have been mutually negotiated and, accordingly, shall not be interpreted against either County or Construction Manager on the basis that either party was solely responsible for or in control of the drafting of this Agreement.

### **13.13 ADVERTISING**

Construction Manager may not use County's name or refer to County or the Project, directly or indirectly, in any promotional materials, advertisement, news release or release to any professional or trade publication without County's prior written approval, which may be granted or withheld in its sole and absolute discretion.

### **13.14 ELECTRONIC DOCUMENTS**

In the event of any conflict between a document contained in an electronic file and the hard copy of such document maintained in the files of County or Construction Manager, the hard copy shall control.

### **13.15 COUNTERPARTS**

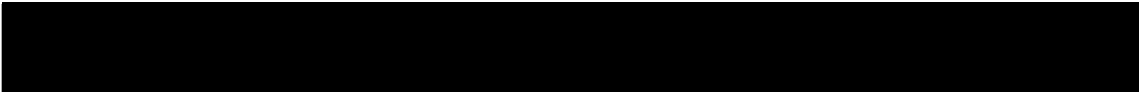
This Agreement may be executed by wet signature in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together shall constitute the same agreement.

### **13.16 TITLES FOR CONVENIENCE**

The table of contents and the headings of articles and paragraphs are for convenience only and shall not modify rights and obligations created by this Agreement.

### **13.17 NONDISCRIMINATION**

Construction Manager shall comply, and cause its Subconsultants, of every Tier, to comply, with all requirements of Applicable Laws pertaining to equal opportunity employment and nondiscrimination, including, without limitation, those requirements prohibiting discrimination against or segregation of any person or group of persons on account of age, ancestry or national origin, color, creed, disability, gender,



marital status, race, religion or sexual orientation, nor shall Construction Manager permit any such practice prohibited by such requirements to take place in connection with the selection, location or number of consultants or vendors employed. Construction Manager shall include the provisions of this Section 13.18 in all contracts entered into with Subconsultants for performance of services provided for under this Agreement.

**13.18 SERVICES PERFORMED BY CONSTRUCTION MANAGER OR AFFILIATES**

The Construction Manager shall not enter into any subcontract, contract, agreement, purchase order, or other arrangement ("Arrangement") for the furnishing of any portion of the services provided for in this Agreement with any party or entity if such party or entity is an Affiliated Entity (as defined below), unless such Arrangement has been approved in writing by the County after full disclosure in writing by the Construction Manager to the County of such affiliation or relationship and all details relating to the proposed Arrangement. The term "Affiliated Entity" as used in this Section means any entity related to or affiliated with the Construction Manager or with respect to which the Construction Manager has direct or indirect ownership or control, including, without limitation: (1) any entity owned in whole or part by the Construction Manager; (2) if the Construction Manager is a corporation, any holder of more than 10% of the issued and outstanding shares of the Construction Manager; (3) if Construction Manager is not a corporation, any holder of an ownership interest in Construction Manager; or (4) any entity in which any officer, director, employee, partner, or shareholder (or member of the family of any of the foregoing persons) of the Construction Manager, or any entity owned by the Construction Manager, has a direct or indirect interest which interest includes, but is not limited to, that of a partner, employee, agent, or shareholder.

**13.19 REBATES, KICKBACKS**

Construction Manager represents and warrants that it has neither paid or agreed to pay, nor will it pay, any sums or any other consideration to any member of the Board of Supervisors or any other director, officer, employee, agent or other representative of County in connection with this Agreement or any services hereunder, nor has any such payment or agreement for payment been requested or solicited by any such member, director, officer, employee, agent or representative. Construction Manager hereby acknowledges that it understands that this representation and warrant constitute a material inducement upon which County is relying in entering into and performing this Agreement.

**ARTICLE 14  
NOTICES**

**14.1 DELIVERY AND ADDRESSES**

**14.1.1 Delivery.** Any notice that is required by this Agreement shall be given as provided herein below. Electronic (i.e., e-mail) notice shall not be sufficient. All notices, demands, or requests to be given under this Agreement shall be given in writing and shall be conclusively deemed received as follows:

- .1 on the date delivered if delivered personally;
- .2 on the third (3<sup>rd</sup>) business day after the deposit thereof in the United States mail, postage prepaid, and addressed as hereinafter provided;
- .3 on the date received if sent by facsimile transmission or overnight mail (such as, but not limited to, UPS, Fed Ex, or other similarly reputable private or public express carriers); and
- .4 on the date it is accepted or rejected if sent by certified mail.

**14.1.2 Addresses.** All notices, demands or requests required by this Agreement shall be addressed to the parties as follows:

**To County at:**

County of Riverside Economic Development Agency  
3403 10<sup>th</sup> Street, 4<sup>th</sup> Floor  
Riverside, CA 92501  
Attention: Robert Fields, Assistant CEO/EDA

**With additional copies to:**

County of Riverside Economic Development Agency  
3403 10<sup>th</sup> Street, 4<sup>th</sup> Floor  
Riverside, CA 92501  
Attention: Charles Waltman, Deputy Director of Design & Construction

**To Construction Manager at:**

Vanir Construction Management, Inc.  
4540 Duckhorn Drive, Suite 300  
Sacramento, CA 95834  
Attention: Mansour M. Aliabadi, President & CEO

**With additional copies to:**

Vanir Construction Management, Inc.  
290 North D Street, Suite 900  
San Bernardino, CA 92401  
Attention: Area Manager

**14.2 CHANGE OF ADDRESS**

In event of any change of address, the moving party is obligated to notify the other party of the change of address in writing. Each party may amend, supplement and update the notice list to add, delete or replace any listed individuals by notice to the other party in writing.

**ARTICLE 15  
EXHIBITS**

The following exhibits are attached hereto and incorporated in this Agreement by this reference as part of the terms of this Agreement:

<u>Exhibit "A"</u>	-	Description of Development Plan
<u>Exhibit "B"</u>	-	General Conditions of the Standard Form Construction Contract Between County and Contractor
<u>Exhibit "C"</u>	-	Hourly Rates Schedule
<u>Exhibit "D"</u>	-	Initial Program
<u>Exhibit "E"</u>	-	Key Personnel List
<u>Exhibit "F"</u>	-	Master Project Schedule
<u>Exhibit "G"</u>	-	Property Description
<u>Exhibit "H"</u>	-	Reimbursable Expenses Schedule

Edition: August, 2013

INITIALS 

Vanir Construction Management & County of Riverside - East County Detention Center FM08110000265





- Exhibit "I" - Invoice for Payment Form
- Exhibit "J" - Payment Schedule
- Exhibit "K" - Release Forms
- Exhibit "L" - Additional Insureds List
- Exhibit "M" - Subconsultant Insurance Requirements
- Exhibit "N" - Construction Manager's Staffing Fee Schedule
- Exhibit "O" - Construction Manager's Subconsultant Services

In the event of a conflict between the provisions of any of the above-listed exhibits and the terms and conditions of the Agreement, the latter shall control.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**"COUNTY"**

**COUNTY OF RIVERSIDE**

By: \_\_\_\_\_  
JEFF STONE, Chairman  
Board of Supervisors

**ATTEST:**

Kecia Harper-Ihem  
Clerk of the Board

By: \_\_\_\_\_  
Deputy

(SEAL)

**APPROVED AS TO FORM:**

PAMELA J. WALLS  
County Counsel

By: Marsha L. Victor 1/16/14  
Principal Deputy County Counsel

**"CONSTRUCTION MANAGER"**

Mansour M. Aliabadi  
(sign on line above)

By: Mansour M. Aliabadi

Title: President & CEO

The following information must be provided concerning the Construction Manager:

State whether Construction Manager is corporation, individual, partnership, joint venture or other:

Corporation

If "other", enter legal form of business:

Enter address: 4540 Duckhorn Drive, Suite 300  
Sacramento, CA 95834

Telephone: (916) 575-8888  
Facsimile: (916) 575-8887  
E-mail: mansour.aliabadi@vanir.com

Employer State  
Tax ID #: 29782273

License #: \_B-459092

If Construction Manager is a corporation, state:

Name of President: Mansour M. Aliabadi

Name of Secretary: Dorene Dominguez

State of Incorporation: California

## EXHIBIT "A "

### DESCRIPTION OF DEVELOPMENT PLAN

The detention center site is located at 46057 Oasis Street in the City of Indio, at the intersection of Highway 111 and Oasis Street. Additionally, the supporting parking structure is located across from the detention center site diagonally southeast across Oasis Street and immediately south of the Larson Justice Center courthouse.

The County proposes a 1,626 bed facility, a net increase of 1,273 beds on site, to replace the existing 353 bed Indio Jail. The construction of the East County Detention Center will be phased to minimize capacity impacts to the existing jail, and the existing 353 beds will remain on-line during the construction of the project. Once the new housing structure is completed, the existing 353 bed jail structure will be demolished and replaced with surface parking. The new parking structure will finish construction shortly after the construction start of the detention center project.

**GENERAL CONDITIONS OF**  
**THE STANDARD FORM CONSTRUCTION CONTRACT**  
**BETWEEN COUNTY AND CONTRACTOR**

(LONG FORM)

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**GENERAL CONDITIONS OF**  
**THE STANDARD FORM CONSTRUCTION CONTRACT**  
**BETWEEN COUNTY AND CONTRACTOR**

(LONG FORM)

**ARTICLE 1**  
**GENERAL PROVISIONS**

**1.1 DEFINITIONS**

1.1.1 **Acceptance.** "Acceptance" means the point that the Project is formally accepted by the Board of Supervisors and a Notice of Completion is recorded by County.

1.1.2 **Act of God.** "Act of God" means earthquake, natural flood, tornado or other unusually severe natural or weather phenomenon occurring at the Site and causing Delay to performance of the Work at the Site; provided, however, that precipitation and winds shall not be an Act of God unless it exceeds in any given month the 10-year average of monthly levels as established by the National Oceanic and Atmospheric Administration ("NOAA") according to NOAA's records of measurable precipitation and winds taken at NOAA's recording station located within the Riverside County basin area that is nearest to the Site.

1.1.3 **Addendum.** "Addendum" means written or graphic information (including, without limitation, Drawings or Specifications) issued prior to the Bid Closing Deadline, which modifies or interprets the Bidding Documents by additions, deletions, clarifications or corrections.

1.1.4 **Admitted Surety.** "Admitted Surety" means a surety insurer that is duly certified pursuant to California Insurance Code §995.120 to transact business as a surety in the State of California.

1.1.5 **Allowable Costs.** "Allowable Costs" means those costs listed in Paragraph 7.7.3, below, that are used in calculating Contract Adjustments to the Contract Price.

1.1.6 **Allowable Markups.** "Allowable Markups" means those percentage markups listed in Paragraph 7.7.5, below, used in calculating Contract Adjustments to the Contract Price.

1.1.7 **Alternate.** "Alternate" means a proposed alternative described in the Bidding Documents adding to, or deleting from, the Bidding Documents a particular material, system, product or method of construction.

1.1.8 **Applicable Laws.** "Applicable Laws" means all statutes, ordinances, rules, regulations, policies and guidelines enacted by Governmental Authorities (including, without limitation, Environmental Laws and Disability Laws), codes adopted or promulgated by Governmental Authorities (including, without limitation, building and health and safety codes), lawful orders of Governmental Authorities and common law, including, but not limited to, principles of equity applied by the courts of the State of California, which are in effect at the time the Work is performed.

1.1.9 **Application for Payment.** "Application for Payment" means Contractor's itemized application for Progress Payment or Final Payment prepared, submitted and substantiated in accordance with the requirements of the Contract Documents.

1.1.10 **Architect.** "Architect" means the design professional retained by County that is primarily responsible for the preparation of the Drawings and Specifications for the Project.

1.1.11 **Assistant CEO/EDA.** "Assistant CEO/EDA" means the Assistant CEO for the Economic Development Agency, or his/her designee.

1.1.12 **Award.** "Award" means either (1) a minute order duly adopted by the Board of Supervisors approving County's entering into the Construction Contract with Contractor or (2) execution of the Construction Contract by the Clerk of the Board.

1.1.13 **Base Bid.** "Base Bid" means the sum of money stated in a Bid for which the Bidder proposes to perform the Work, exclusive of adjustments for Alternates.

1.1.14 **Bid.** "Bid" means the completed and signed Bid Form and other Bid Submittals submitted by a Bidder to County in response to the Notice Inviting Bids and in accordance with the Instructions to Bidders.

1.1.15 **Bid Amount.** "Bid Amount" means the dollar amount that is used as the basis for determining which Bidder has submitted the lowest Bid price for purposes of Award pursuant to the County's chosen method of Award set forth in Paragraph 4.5.3 of the Instructions to Bidders.

1.1.16 **Bid Bond.** "Bid Bond" means alternative form of Bid Security submitted by a Bidder that consists of a surety bond issued by a Surety.

1.1.17 **Bid Closing Deadline.** "Bid Closing Deadline" means the deadline (date and time) for receipt of Bids by County that is stated in the Bidding Documents, as adjusted by Addendum.

1.1.18 **Bid Form.** "Bid Form" means the form prescribed by the Bidding Documents to be completed and signed by a Bidder showing the dollar amount(s) of its Bid.

1.1.19 **Bid Security.** "Bid Security" means a deposit of cash, certified or cashier's check or bond submitted by a Bidder in accordance with the Bidding Documents guaranteeing that if Award is made to the Bidder, the Bidder will enter into the Construction Contract and furnish the Performance Bond and Payment Bond and other Post-Award Submittals.

1.1.20 **Bid Submittal.** "Bid Submittal" means a document that Bidder is required by the Bidding Documents to submit with or as part of its Bid.

1.1.21 **Bidder.** "Bidder" means a person or entity submitting a Bid for Award of the Construction Contract.

1.1.22 **Bidding Documents.** "Bidding Documents" means the following collection of documents prepared and issued by County relating to the Project:

- .1 Notice Inviting Bids;
- .2 Instructions to Bidders;
- .3 Bid Form;
- .4 Standard Form of Construction Contract Between County and Contractor (unsigned);
- .5 General Conditions to Standard Form of Construction Contract Between County and Contractor (Long Form);
- .6 Specifications;
- .7 Plans and Drawings;
- .8 Addenda;
- .9 Reference Documents;
- .10 Safety Program; and

.11 those documents, or those portions or provisions of documents, that, although not listed in Subparagraph 1.1.22.2 through Subparagraph 1.1.22.10, above, are expressly cross-referenced therein or attached thereto, including, without limitation, all documents submitted by Contractor as part of its Bid or Post-Award Submittals.

1.1.23 **Board of Supervisors.** "Board of Supervisors" means the Board of Supervisors for the County of Riverside.

1.1.24 **Change.** "Change" means a modification, change, addition, substitution or deletion in the Work or in Contractor's means, methods, manner, time or sequence of performing the Work arising from any cause or circumstances, including, without limitation, either directly at the request of County or constructively by reason of other circumstances. Use of the term "Change," in any context, in the Contract Documents shall not be interpreted as implying that Contractor is entitled to a Contract Adjustment on any basis other than as permitted by the terms of the Contract Documents for Compensable Change, Deleted Work or Compensable Delay.

1.1.25 **Change Order.** "Change Order" means a written instrument, signed in accordance with the requirements of the General Conditions, setting forth the agreement of County and Contractor on the terms of a Contract Adjustment.

1.1.26 **Change Order Request.** "Change Order Request" means Contractor's written request for a Contract Adjustment pursuant to Paragraph 7.6.2, below.

1.1.27 **Claim.** "Claim" means a written demand or assertion by Contractor seeking, as a matter of right, an interpretation of contract, payment of money, recovery of damages or other relief. A Claim does not include the following: (1) tort claims for personal injury or death; (2) stop payment notice claims; (3) a determination of the right of County to specific performance or injunctive relief to compel performance; (4) a determination of the right of County to suspend, revoke or limit the Contractor's Prequalification status or rating or to debar Contractor from bidding or contracting with County; or (5) a determination of the right of County under Applicable Laws to terminate the Construction Contract and/or recovery of penalties imposed upon Contractor for violation of statutory obligations under Public Contract Code §4100 *et seq.*

1.1.28 **Close-Out Documents.** "Close-Out Documents" means all Record Documents, warranties, guarantees, technical information, operations manuals, replacement parts, excess and attic stock and other documents (including, without limitation, electronic versions and hard copies) and things required to be submitted by Contractor under the Contract Documents as a condition of Final Completion or Final Payment.

1.1.29 **Compensable Change.** "Compensable Change" means circumstances involving the performance of Extra Work:

.1 that are the result of

- (1) Differing Site Conditions,
- (2) amendments or additions to Applicable Laws, which amendments or additions are enacted after the Bid Closing Deadline,
- (3) a Change requested by County in accordance with the conditions of authorization applicable to Compensable Changes set forth in Article 7, below, or
- (4) other circumstances involving a Change in the Work for which Contractor is given under the Contract Documents a specific and express right to a Contract Adjustment to the Contract Price;

.2 that are not caused, in whole or in part, by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, or violation of an Applicable Law, or by a failure of Contractor or a Subcontractor, of any Tier, to comply with the Contract Documents;

.3 for which a Contract Adjustment is neither prohibited by nor waived under the terms of the Contract Documents; and

.4 that if performed would require Contractor to incur additional and unforeseeable Allowable Costs that would not have been required to be incurred in the absence of such circumstances.

1.1.30 **Compensable Delay.** "Compensable Delay" means a Delay to the critical path of activities affecting Contractor's ability to achieve Substantial Completion of the entirety of the Work within the Contract Time:

.1 that is the result of

(a) a Compensable Change,

(b) the active negligence of County, Architect, a County Consultant or a Separate Contractor,

(c) a breach by County of an obligation under the Contract Documents, or

(d) other circumstances involving Delay for which Contractor is given under the Contract Documents a specific and express right to a Contract Adjustment adjusting the Contract Price;

.2 that is not caused, in whole or in part, by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, or a violation of an Applicable Law, or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents; and

.3 for which a Contract Adjustment to the Contract Time is neither prohibited by nor waived under the terms of the Contract Documents.

1.1.31 **Construction Change Directive.** "Construction Change Directive" means a written instrument signed in accordance with the requirements of Article 7, below, that: (1) directs the performance of a Change that does not involve a Contract Adjustment; (2) establishes a mutually agreed basis for compensation to Contractor for a Compensable Change under circumstances where performance of the Compensable Change needs to proceed in advance of the County performing a full evaluation of the Contractor's rights relative to a Contract Adjustment; or (3) directs performance of Work or a Change with respect to which there exists a dispute or question regarding the terms of a Contract Adjustment.

1.1.32 **Construction Contract.** "Construction Contract" means the written form of Standard Form of Construction Contract Between County and Contractor included in the Bidding Documents signed by County and Contractor.

1.1.33 **Construction Schedule.** "Construction Schedule" means the detailed, critical path schedule prepared by Contractor in accordance with the requirements of the Contract Documents showing Contractor's plan for performance of the Work within the Contract Time.

1.1.34 **Contract Adjustment.** "Contract Adjustment" means an adjustment, additive or deductive, to the Contract Price or Contract Time that is permitted by the Contract Documents due to circumstances constituting a Compensable Change, Compensable Delay or Deleted Work.

1.1.35 **Contract Documents.** "Contract Documents" means the following collection of documents:

.1 Construction Contract;

.2 Addenda;

.3 General Conditions;

- .4 Specifications;
- .5 Plans and Drawings;
- .6 Modifications;
- .7 Reference Documents;
- .8 Change Orders;
- .9 Unilateral Change Orders;
- .10 Construction Change Directives;
- .11 Safety Program;
- .12 other documents that comprise exhibits, attachments or riders to the documents listed in preceding Subparagraph 1.1.35.1 through Subparagraph 1.1.35.11, above;
- .13 executed Declaration of Sufficiency of Funds;
- .14 executed Non-Collusion Declaration; and
- .15 if the Bidding Documents limit bidding to Prequalified Bidders, those written representations, obligations or responsibilities made, acknowledged or assumed by the Bidder as part of the applicable Prequalification conducted by County, including, without limitation, any continuing obligations assumed by Contractor to disclose false or misleading information, report changes in ownership or management and comply with minimum safety requirements.

1.1.36 **Contract Price.** "Contract Price" means the dollar amount set forth in the Construction Contract as the total compensation payable by County to Contractor for complete performance by Contractor in accordance with the Contract Documents of the Work and other obligations assumed by Contractor under the Contract Documents.

1.1.37 **Contract Time.** "Contract Time" means the total number of Days set forth in the Construction Contract within which Contractor is obligated to achieve Substantial Completion and/or Final Completion of the Work, as extended or shortened by Contract Adjustments.

1.1.38 **Contractor.** "Contractor" means the person or entity identified by County as the Bidder receiving Award of the Construction Contract.

1.1.39 **Contractor Amount.** "Contractor Amount" means the component amount calculated on behalf of Contractor pursuant to Paragraph 15.1.5, below, that is used to determine the total net amount payable to Contractor or County in the event of a partial or full termination or discontinuance of the Work.

1.1.40 **Contractor's Own Expense.** "Contractor's Own Expense" means that Contractor agrees to assume sole responsibility to pay and be responsible for any resulting or associated Loss and Delay, without any Contract Adjustment and without any other form of compensation or reimbursement, of any kind, by County.

1.1.41 **County.** "County" means the County of Riverside, a political subdivision of the State of California.

1.1.42 **County Amount.** "County Amount" means the component amount calculated on behalf of County pursuant to Paragraph 15.1.5, below, that is used to determine the total net amount payable to Contractor or County in the event of a partial or full termination or discontinuance of the Work.

1.1.43 **County Consultant.** "County Consultant" means a consultant, other than Architect, engaged by County (or engaged as a subconsultant to the Architect or a County Consultant) to provide professional advice to County with respect to the design, construction or management of the Project.

1.1.44 **County Review Date.** "County Review Date" means an end date set forth in the Construction Schedule or Submittal Schedule within which County, Architect or a County Consultant is to provide information, review documents or render decisions, approvals or disapprovals.

1.1.45 **County Review Period.** "County Review Period" means a period of time set forth in the Construction Schedule or Submittal Schedule within which County, Architect or a County Consultant is to provide information, review documents or render decisions, approvals or disapprovals.

1.1.46 **County Risk Manager.** "County Risk Manager" means the individual employee of the County acting as its risk manager.

1.1.47 **County Website.** "County Website" means the website maintained by County at <http://www.rivcoeda.org>.

1.1.48 **Date of Commencement.** "Date of Commencement" means the starting date used for calculation of the Contract Time, and is the date, no earlier than the first working day following issuance of the Notice to Proceed, that is fixed in the Notice to Proceed issued by the County or, if no Notice to Proceed is issued, the Day that the Contractor actually commences Work at the Site in accordance with Paragraph 8.1.1, below.

1.1.49 **Day.** "Day", whether capitalized or not, and unless otherwise specifically provided, means calendar day, including weekends and Holidays.

1.1.50 **Declaration of Sufficiency of Funds.** "Declaration of Sufficiency of Funds" means the declaration, in the form included in the Bidding Documents, required to be submitted by Contractor under circumstances where Contractor has not executed a collective bargaining agreement covering the workers who will be employed to perform the Work.

1.1.51 **Defective Work.** "Defective Work" means materials, equipment, labor, workmanship, construction services or other construction work comprising the Work by Contractor or a Subcontractor that (1) is faulty, omitted, incomplete, or deficient, or (2) does not conform to Applicable Laws, the Contract Documents, or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents.

1.1.52 **Delay.** "Delay" means any circumstances involving delay, disruption, hindrance or interference.

1.1.53 **Deleted Work.** "Deleted Work" means Work that is eliminated or its scope or cost reduced pursuant to a Change Order or Unilateral Change Order.

1.1.54 **Department of Industrial Relations.** "Department of Industrial Relations" means The Department of Industrial Relations of the State of California.

1.1.55 **Design Discrepancy.** "Design Discrepancy" means an error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Laws contained in the Bidding Documents, Contract Documents, Reference Documents or other information made available by County to Contractor prior to or after the Bid Closing Deadline.

1.1.56 **Design Documents.** "Design Documents" means all originals, copies and drafts of plans, drawings, tracings, specifications, programs, reports, calculations, presentation materials, models, building information models and other writings or materials containing designs, specifications or engineering information related to the Work or Project prepared by Architect, County Consultants, Contractor, Separate Contractors or Subcontractors including, without limitation, computer aided design materials, electronic data files and paper copies. The term "Design Documents" includes both the written documents and all building and other designs depicted therein.



1.1.57 **Design Intent.** "Design Intent" means the general intended design objectives of the Design Documents prepared by Architect and County Consultants, as described in Paragraph 1.2.1, below.

1.1.58 **Designation of Subcontractors.** "Designation of Subcontractors" means the list of proposed Subcontractors prepared by the Bidder pursuant to California Public Contract Code §§4100 et seq.

1.1.59 **Differing Site Condition.** "Differing Site Condition" means an unforeseen condition that constitutes a basis for Contract Adjustment pursuant to Paragraph 4.3.8, below.

1.1.60 **Disability Laws.** "Disability Laws" means applicable federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any Government Authority, which regulate, relate to or impose liability or standards of conduct with respect to, or accessibility for, persons with disabilities, including, without limitation, the Americans with Disabilities Act (42 USCA §§ 12101 et seq.) and the Fair Housing Amendments Act of 1988 (42 USCA §§ 3604 et seq.).

1.1.61 **Discovery Date.** "Discovery Date", generally used in reference to Contractor's obligation to give written notice of certain facts, conditions or circumstances, means the earlier of the dates that Contractor or any Subcontractor either: (1) discovered such facts, conditions or circumstances; or (2) should have discovered such facts, conditions or circumstances in the exercise of the level of care required by the terms of the Standard of Performance.

1.1.62 **Drawings.** "Drawings" means graphic and pictorial documents showing the design, location and dimensions of the Project, and generally includes plans, elevations, subparagraphs, details, schedules and diagrams. The term "Drawings" is used interchangeably with "Plans".

1.1.63 **EDA.** "EDA" means the Economic Development Agency for the County of Riverside.

1.1.64 **Environmental Laws.** "Environmental Laws" means all applicable federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees and permits or other requirements of any Governmental Authority, which regulate, relate to, or impose liability or standards of conduct concerning any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge or storage thereof), occupational or environmental conditions on, under, or about the Site or Existing Improvements (including, without limitation, soil, groundwater, and indoor and ambient air conditions), environmental protection (natural or manmade resources), or occupational health or industrial hygiene (but only to the extent related to Hazardous Substances on, under, or about the Site or Existing Improvements), as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C.A. §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 [42 U.S.C.A. §§ 6901 et seq.]; the Clean Water Act (also known as the Federal Water Pollution Control Act) [33 U.S.C.A. §§ 1251 et seq.]; the Toxic Substances Control Act [15 U.S.C.A. §§ 2601 et seq.]; the Hazardous Substances Transportation Act [49 U.S.C.A. §§ 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 U.S.C.A. §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 U.S.C.A. §§ 6901 et seq.]; the Clean Air Act [42 U.S.C.A. §§ 7401 et seq.]; the Safe Drinking Water Act [42 U.S.C.A. §§ 300f et seq.]; the Solid Waste Disposal Act [42 U.S.C.A. §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 U.S.C.A. §§ 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 U.S.C.A. §§ 11001 et seq.]; the Occupational Safety and Health Act [29 U.S.C.A. §§ 655 and 657]; the Residential Lead-Based Paint Exposure Act (Title X of the Housing and Community Development Act of 1992) [15 U.S.C.A. §§ 2681 et seq.]; the Lead-Based Paint Poisoning Prevention Act [42 U.S.C.A. §§ 4821 et seq.]; the Federal Endangered Species Act, the California Endangered Species Act, the Migratory Bird Treaty Act, the National Environmental Policy Act, the California Environmental Quality Act, Porter Cologne Water Quality Act (California Water Code §§ 13000 et seq), and all similar federal, state or local laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements.

1.1.65 **Escrow Agent.** "Escrow Agent" means an entity serving as escrow agent pursuant to California Public Contract Code §22300 in connection with the deposit of securities or retention.

1.1.66 **Escrow Bid Documents.** "Escrow Bid Documents" means all written documentation and electronic files reflecting the basis for and calculation of a Bid, including, without limitation, estimates, quantity take-offs, price quotations, product data, pricing data, memoranda, narratives, add/deduct sheets and reports (including, without

limitation, reports on conditions at, under, or in the vicinity of the Site). The term "Escrow Bid Documents" does not include copies of Bidding Documents if they are not needed to comply with the requirements of the Bidding Documents applicable to submission of Escrow Bid Documents.

**1.1.67 Event of Contractor Default.** "Event of Contractor Default" means any of the events constituting default by Contractor as set forth in Paragraph 15.1.1, below.

**1.1.68 Evidence of Insurance.** "Evidence of Insurance" means the statement, completed by Bidder in the form included in the Bidding Documents, evidencing the Bidder's compliance with the insurance requirements of the Bidding Documents.

**1.1.69 Excusable Delay.** "Excusable Delay" means a Delay, other than a Compensable Delay, to Contractor's ability to achieve Substantial Completion or Final Completion of the Work within the Contract Time that is: (1) not caused, in whole or in part, by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents; (2) unforeseeable, unavoidable and beyond the control of Contractor and the Subcontractors, of every Tier; and (3) the result of a Force Majeure Event. Without limitation to the foregoing, neither the bankruptcy, insolvency nor financial inability of Contractor or a Subcontractor, of any Tier, nor any failure by a Subcontractor, of any Tier, to perform any obligation imposed by contract or Applicable Laws shall constitute a ground for Excusable Delay.

**1.1.70 Existing Improvements.** "Existing Improvements" means all improvements located on the Site as of the Bid Closing Deadline, whether above or below the surface of the ground, including, but not limited to, existing buildings, utilities, infrastructure improvements and other facilities.

**1.1.71 Extra Work.** "Extra Work" means labor, materials, equipment, services or other work, not reasonably inferable by Contractor or its Subcontractors from the design and other information set forth in the Bidding Documents, the performance of which requires the expenditure by Contractor of additional and unforeseen Allowable Costs. References to Extra Work shall not be interpreted to mean or imply that Contractor is entitled to a Contract Adjustment unless such Extra Work constitutes a Compensable Change.

**1.1.72 Final Completion, Finally Complete.** "Final Completion" and "Finally Complete" mean the point at which the following conditions have occurred with respect to the entire Work:

- .1 the Work is fully completed, including all minor corrective, or "punch list," items;
- .2 all permits, approvals and certificates by Governmental Authorities, such as, but not necessarily limited to, a permanent or temporary certificate of occupancy required to occupy and use the Work have been issued free of any conditions that are the result of an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents;
- .3 the Work and the related portions of the Site have been thoroughly cleared of all construction debris and cleaned in accordance with the requirements of the Contract Documents, including, but not necessarily limited to where applicable, the following: removal of temporary protections; removal of marks, stains, fingerprints and other soil and dirt from painted, decorated and natural-finished woodwork and other Work; removal of spots, plaster, soil and paint from ceramic tile, marble and other finished materials; all surfaces, fixtures, cabinet work and equipment are wiped and washed clean and in an undamaged, new condition; all aluminum and other metal surfaces are cleaned in accordance with recommendations of the manufacturer; and all stone, tile and resilient floors are cleaned thoroughly in accordance with the manufacturer's recommendations and buff dried by machine to bring the surfaces to sheen;
- .4 all conditions set forth in the Contract Documents for Substantial Completion of the Work have been, and continue to be, fully satisfied;

.5 all conditions pertaining to the Work and required for the release of County's obligations (including, but not limited to, release of County's bond obligations) to Governmental Authorities (including, but not limited to, matters involving grading, flood control, public works, transportation and traffic) have been satisfied; and

.6 Contractor has delivered to County all Close-Out Documents.

**1.1.73 Final Completion Punch List.** "Final Completion Punch List" means the list of minor items of Work to be completed or corrected by Contractor for Final Completion.

**1.1.74 Final Payment.** "Final Payment" means payment by County to Contractor of the entire unpaid balance of the Contract Price due to Contractor following Final Completion.

**1.1.75 Force Majeure Event.** "Force Majeure Event" means, and is restricted to, any the following: (1) Acts of God occurring at the Site; (2) terrorism or other acts of a public enemy; (3) orders of Governmental Authorities (including, without limitation, unreasonable and unforeseeable Delay in the issuance of permits or approvals by Governmental Authorities that are required for the Work); (4) epidemics or quarantine restrictions; (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work to the extent such strikes and other organized labor action are beyond the control of Contractor and its Subcontractors, of every Tier, and to the extent the effects thereof cannot be avoided by use of replacement workers or implementation of a dual gate system of entry to the Site; or (6) unusual shortages in materials that are supported by documented proof that (a) Contractor made every effort to obtain such materials from all available sources, (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices entirely inconsistent with current rates taking into account the quantities involved and the usual industry practices in obtaining such quantities, and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated as of the Bid Closing Deadline.

**1.1.76 Fragnet.** "Fragnet" means a contemporaneous, fragmentary scheduling network, which graphically identifies the sequencing of all critical and non-critical new activities and/or activity revisions affected by a Compensable Delay or Excusable Delay with logic ties to all affected existing activities noted on the Construction Schedule, that isolates and quantifies a time impact of a specific issue, determines and demonstrates any such specific Delay in relation to past and/or other current Delays and provides a method for incorporating all Contract Adjustments to the Contract Time into an update of the approved Construction Schedule.

**1.1.77 General Conditions.** "General Conditions" means the herein set forth general terms and conditions governing performance of the Work.

**1.1.78 General Requirements.** "General Requirements" means the portion of the Specifications so titled setting forth additional requirements for administration of the Work.

**1.1.79 Good Faith Determination.** "Good Faith Determination" means a determination made by the Assistant CEO/EDA or other authorized representative of County, which he/she believes in good faith to be a proper exercise of County's rights and to have a reasonable basis in fact, whether or not such determination is in fact proper, reasonable or correct or adjudged to be so.

**1.1.80 Governmental Authority.** "Governmental Authority" means the United States, the State of California, the County of Riverside (acting in its regulatory, rather than proprietary, capacity), the City in which the Project is located, any other local, regional, state or federal political subdivision, authority, agency, department, commission, board, bureau, court, judicial or quasi-judicial body, and any legislative or quasi-legislative body, or instrumentality of any of them, which exercises jurisdiction over the Project, Work, Site, Contractor or County, including, without limitation, any Governmental Authority having jurisdiction to review and approve or reject the Contract Documents or the Work based on compliance or non-compliance with Applicable Laws.

**1.1.81 Governmental Authority Review Period.** "Governmental Authority Review Period" means a period of time set forth in the Construction Schedule or Submittal Schedule for Governmental Authority review, and/or approval, of the Work.

**1.1.82 Guarantee To Repair Period.** "Guarantee To Repair Period" means the period of time set forth in Section 13.3, below, for repair or replacement of Defective Work.

**1.1.83 Hazardous Substance.** "Hazardous Substance" means either of the following: (1) any chemical, material or other substance defined as or included within the definition of "hazardous substances," "hazardous wastes," "extremely hazardous substances," "toxic substances," "toxic material," "restricted hazardous waste," "special waste," "contamination" or words of similar import under any Environmental Law, including, without limitation, the following: petroleum (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs") and PCB-containing materials, whether or not occurring naturally; or (2) any substance that because of its quantity, concentration or physical or chemical characteristics poses a significant present or potential hazard to human health and safety or to the environment, and which has been determined by any Governmental Authority to be a hazardous waste or hazardous substance.

**1.1.84 Holiday.** "Holiday" means a Day recognized by County as being a legal holiday for its staff and employees.

**1.1.85 Indemnitees.** "Indemnitees" means those persons or entities listed in Paragraph 3.18.1, below, as the "Indemnitees".

**1.1.86 Inspector of Record.** "Inspector of Record" means a person designated by the County to perform inspections on behalf of the County, who may be an employee or an independent consultant to County.

**1.1.87 Installation Subcontractor.** "Installation Subcontractor" means a Subcontractor who performs a portion of the Work that includes providing substantial, rather than minor and incidental, services for the installation of temporary or permanent materials, equipment or facilities at the Site.

**1.1.88 Instructions to Bidders.** "Instructions to Bidders" means the portion of the Bidding Documents setting forth the requirements to be followed by Bidders in preparing and submitting Bids.

**1.1.89 Intellectual Property Rights.** "Intellectual Property Rights" means all intellectual property rights, including, without limitation, patent, trademark, trade dress, copyright, industrial design rights, priority rights and trade secrets.

**1.1.90 Key Personnel, Key Persons.** "Key Personnel" and "Key Persons" mean those individuals employed by Contractor as described in Paragraph 3.8.1, below, and any replacements thereto approved by County, whose personal performance is deemed of the essence to the Construction Contract.

**1.1.91 Loss, Losses.** "Loss" and "Losses" mean any and all economic and non-economic losses, costs, liabilities, claims, damages, cost escalations, actions, judgments, settlements, expenses, fines, penalties and punitive damages including, without limitation, full and actual attorney's fees (including, without limitation, attorney's fees for trial and on appeal), expert and non-expert witness fees, arbitrator and arbitration fees, court costs (statutory and non-statutory), and mediation and mediator fees.

**1.1.92 Modification.** "Modification" means a document, other than a Change Order or Construction Change Directive, approved and signed by County and Contractor after execution of the Construction Contract, agreeing to alter, amend or modify the Contract Documents.

**1.1.93 Mold.** "Mold" means mold, mildew, spores or other microorganisms of any type, nature or description, or any by-product thereof, the presence of which poses an actual or potential threat to human health, including, without limitation, any species of organisms of the kingdoms of fungi or mycota, including yeasts, smuts, ruts, mildews, mold and mushrooms, or any microbial contamination, either airborne or surface, which arises out of or is related to the presence of fungi or spores (including, without limitation, aspergillus, cladosporium, penicillium and stachybotrys chartarum).

**1.1.94 Non-Collusion Declaration.** "Non-Collusion Declaration" means the form, so titled, required by California Public Contract Code §7106 and the Bidding Documents to be submitted by Bidder with its Bid.

1.1.95 **Notice Inviting Bids.** "Notice Inviting Bids" means the notice issued by or on behalf of County inviting submission of Bids for the Project.

1.1.96 **Notice Inviting Prequalification Statements.** "Notice Inviting Prequalification Statements" means the formal notice issued by County inviting contractors to participate in County's process for Prequalification of Bidders.

1.1.97 **Notice of Change.** "Notice of Change" means a formal written notice required to be submitted by Contractor pursuant to Paragraph 7.6.1, below, notifying County of circumstances that Contractor believes may give rise to a Contract Adjustment.

1.1.98 **Notice of Completion.** "Notice of Completion" means a "notice of completion" as defined in California Civil Code §9204.

1.1.99 **Notice of Delay.** "Notice of Delay" means a formal written notice prepared and submitted by Contractor pursuant to Paragraph 8.2.2, below, notifying County of circumstances that Contractor believes may give rise to a Contract Adjustment to the Contract Time for Excusable Delay or Compensable Delay or a Contract Adjustment to the Contract Price for Compensable Delay.

1.1.100 **Notice of Final Completion.** "Notice of Final Completion" means the written notice by County confirming the date of actual Final Completion.

1.1.101 **Notice of Intent to Award.** "Notice of Intent to Award" means the written notice by or on behalf of County stating County's intent to Award the Construction Contract.

1.1.102 **Notice of Substantial Completion.** "Notice of Substantial Completion" means the written notice by County confirming the date of actual Substantial Completion.

1.1.103 **Notice to Proceed.** "Notice to Proceed" means the written notice issued by County to Contractor to begin the Work.

1.1.104 **Payment Bond, Performance Bond.** "Payment Bond" and "Performance Bond" mean the surety bonds required to be provided by Contractor pursuant to Article 12, below.

1.1.105 **Plans.** "Plans" means the graphic and pictorial portions of the Contract Documents prepared by Architect or its Subconsultants showing the design, location and dimensions of the Work, including, without limitation, plans, elevations, details, schedules and diagrams. The term "Plans" is used interchangeably with "Drawings".

1.1.106 **Post-Award Submittals.** "Post-Award Submittals" means the documents described in the Bidding Documents that the apparent successful Bidder is required to submit after opening of Bids as a condition of Award.

1.1.107 **Pre-Bid Conference.** "Pre-Bid Conference" means the conference, specified in the Notice Inviting Bids as either mandatory or optional, held prior to the Bid Closing Deadline for the purpose of, without limitation, introducing the Bidders to the Project, and which conference may, or may not, include a review of the Site.

1.1.108 **Prequalification.** "Prequalification" means a process for Prequalification of contractors for bidding that is conducted by County pursuant to California Public Contract Code §20101 or as otherwise permitted by Applicable Laws.

1.1.109 **Prequalification Documents.** "Prequalification Documents" means the collection of documents issued to and submitted by individuals or entities pursuant to a Prequalification conducted by County.

1.1.110 **Prequalified Bidder.** "Prequalified Bidder" means a contractor that is prequalified as part of a Prequalification conducted by County pursuant to Public Contract Code §20101.

**1.1.111 Product Data.** "Product Data" means illustrations, standard schedules, charts, instructional brochures, diagrams and other information furnished by Contractor to illustrate a material, product or system for the Work.

**1.1.112 Progress Payment.** "Progress Payment" means a monthly payment of a portion of the Contract Price prior to Final Completion based on Contractor's progressed performance of the Work.

**1.1.113 Project.** "Project" means the improvements comprising, or necessary or appurtenant to the use of, the work of improvements described generally in the Bidding Documents, of which the Work may be the entirety of such improvements or only a part.

**1.1.114 Project Documents.** "Project Documents" means all writings (hard copy and electronic) in the possession of Contractor at the Site or elsewhere that relate in any way to the Project or Work.

**1.1.115 Project Team.** "Project Team" means County, Architect, County Consultants, Contractor, the Subcontractors, the Separate Contractors, Inspectors of Record and other firms or individuals retained by County, or retained by others with County's approval, participating in the planning, programming, design, construction or inspection of the Work.

**1.1.116 Reasonable Order of Magnitude Estimate.** "Reasonable Order of Magnitude Estimate" means a general estimate prepared by Contractor, or jointly by Contractor and County, without the benefit of complete or definitive pricing by Subcontractors, of the projected additional cost and time associated with Contractor's performance of a particular item or items of Extra Work or Deleted Work described in a Construction Change Directive. Unless otherwise agreed to in writing between County and Contractor, a Reasonable Order of Magnitude Estimate does not constitute either an authorization or agreement by County to any Contract Adjustment or a guarantee or promise by Contractor with respect to the amount of any Contract Adjustment that may be associated with a Compensable Change or Deleted Work.

**1.1.117 Record Documents.** "Record Documents" means the collection of documents assembled and prepared by Contractor (including, without limitation, the Record Drawings and Specifications) showing the condition of the Work as actually built.

**1.1.118 Record Drawings, Record Specifications.** "Record Drawings" and "Record Specifications" mean the Drawings and Specifications marked by Contractor to show the condition, location and placement of the Work as actually built, including, without limitation, the locations of mechanical, electrical, plumbing or similar portions of the Work that are depicted diagrammatically in the Drawings.

**1.1.119 Reference Documents.** "Reference Documents" means reports, studies, surveys and other information provided by County for Contractor's review and consideration in preparing its Bid, including, without limitation, information describing the Site (including surface or subsurface conditions), Existing Improvements or Hazardous Substances at the Site.

**1.1.120 Request for Extension.** "Request for Extension" means a formal written request submitted by Contractor pursuant to Paragraph 8.2.3, below, setting forth the justification and support for Contractor's request for a Contract Adjustment to the Contract Time.

**1.1.121 Request for Information.** "Request for Information" means a written request by Contractor for clarification of what it perceives to be a discrepancy in the Contract Documents (including, without limitation, information in the Contract Documents constituting a Design Discrepancy or a variance between the information in the Bidding Documents or Contract Documents and conditions at the Site or in Existing Improvements).

**1.1.122 Safety Program.** "Safety Program" means the formal, written program prepared by Contractor setting forth detailed procedures and precautionary measures for protecting persons and property from injury or damage.

**1.1.123 Samples.** "Samples" means physical examples that, when approved by County and Architect, illustrate materials, equipment or workmanship by which the Work is to be evaluated and judged as part of the Submittal process.

**1.1.124 Schedule of Values.** "Schedule of Values" means a detailed, itemized breakdown of the Contract Price, which provides for an allocation of the dollar values to each of the various parts of the Work.

**1.1.125 Self-Performed Work.** "Self-Performed Work" means Work related to a Compensable Change or Deleted Work that is performed or to be performed by Contractor's own laborers who are employed by Contractor, rather than by the employees of a Subcontractor, using materials and equipment purchased by Contractor directly from a supplier or manufacturer.

**1.1.126 Separate Contractor.** "Separate Contractor" means a contractor, subcontractor, supplier or vendor under contract directly to County to provide services, materials, labor, equipment or other work to the Project.

**1.1.127 Shop Drawing.** "Shop Drawing" means a drawing, diagram, schedule and other data specially prepared for the Work by Contractor or a Subcontractor to illustrate some portion of the Work.

**1.1.128 Site.** "Site" means: (1) the parcel of land owned by County on which the Project is to be constructed and such additional parcels as may be purchased by County for such construction; (2) all areas adjacent to such parcels that may be used by Contractor or the Subcontractors for staging, storage, parking or temporary offices; and (3) all land areas, both private and public, adjacent to such parcels on which Work is required to be performed under the Contract Documents, Applicable Laws or permits relating to the Project.

**1.1.129 Specifications.** "Specifications" means the portion of the Contract Documents consisting of the written requirements for materials, equipment, standards and workmanship for the Work and performance of related services.

**1.1.130 Standard of Performance.** "Standard of Performance" means the general standard governing Contractor's performance of its obligations under the Construction Contract and General Conditions as set forth in Section 2.2 of the Construction Contract.

**1.1.131 State Water Resources Control Board.** "State Water Resources Control Board" means the State Water Resources Control Board of the State of California.

**1.1.132 Storm Water Permit.** "Storm Water Permit" means any applicable storm water, urban runoff or statewide general NPDES permit issued by the State of California or the United States pursuant to the provisions of the Clean Water Act (Title 33U.S.C. §§1251 et seq.) and/or Porter Cologne Water Quality Control Act (California Water Code §§13000 et seq.) and including any related regulations issued by the State of California or the United States.

**1.1.133 Sub-Bidder.** "Sub-Bidder" means a person or entity that submits a bid to a Bidder for some portion of the Work that is to be performed by that person or entity acting as a first-Tier Subcontractor.

**1.1.134 Subcontractor.** "Subcontractor" means a person or entity that has a contract to perform a portion of the Work, including without limitation, subcontractors, sub-subcontractors, suppliers, equipment operators, manufacturers and vendors, of any and every Tier.

**1.1.135 Submittal.** "Submittal" means a Shop Drawing, Product Data, Sample, detailed design, exemplar, fabrication and installation drawing, list, graph, operating instruction or other document required to be submitted by Contractor under the Contract Documents.

**1.1.136 Submittal Schedule.** "Submittal Schedule" means the schedule prepared by Contractor showing the timing for submission and review of Submittals during construction.

**1.1.137 Substantial Completion, Substantially Complete.** "Substantial Completion" and "Substantially Complete" mean the point at which the following conditions have occurred with respect to the entire Work or a portion

of the Work designated by County in writing to be Substantially Completed prior to Substantial Completion of the entire Work:

.1 such Work is sufficiently and entirely complete in accordance with Contract Documents so that such Work can be fully enjoyed and beneficially occupied and utilized by County for its intended purpose (except for minor items which do not impair County's ability to so occupy and use such Work);

.2 all permits, approvals and certificates by Governmental Authorities, such as, but not necessarily limited to, a permanent or temporary certificate of occupancy required to occupy and use such Work have been issued free of any conditions that are the result of an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents; and

.3 all building systems included in such Work are operational as specified, all designated or required inspections and certifications by Governmental Authorities have been made and posted and instruction of County's personnel in the operation of the systems has been completed.

**1.1.138 Substantial Completion Punch List.** "Substantial Completion Punch List" means the list of items of Work to be completed or corrected by Contractor for Substantial Completion.

**1.1.139 Substitution.** "Substitution" means a material, product or item of material or equipment proposed by the Bidder or Contractor in place of that specified in the Bidding Documents or Contract Documents.

**1.1.140 Substitution Request Form.** "Substitution Request Form" means the form, so titled, that is included in the Bidding Documents for use by the Bidders when requesting a Substitution.

**1.1.141 Supplementary Conditions.** "Supplementary Conditions" means those portions of the Specifications that supplement, by addition, modification or deletion, a specific portion of the General Conditions.

**1.1.142 Surety.** "Surety" means Contractor's surety(ties) issuing the Bid Bond, Performance Bond or Payment Bond.

**1.1.143 Tier.** "Tier" means the contractual level of a Subcontractor with respect to Contractor. For example, a "first-tier" Subcontractor is under contract with Contractor. A sub-subcontractor under contract with a first-tier Subcontractor is in the "second tier," and so on. Use of the phrase "of every Tier", or similar phraseology, in the Contract Documents shall not be interpreted as implying that other provisions of the Contract Documents, where such phrase is not used, are intended to be limited in application to only the first Tier or to only certain other Tiers of Subcontractors.

**1.1.144 Time Impact Analysis.** "Time Impact Analysis" means a written report evaluating the impact of an Excusable or Compensable Delay, which shall include, at a minimum, the following: (1) a narrative description of the Delay and its impact on the critical path to achievement of a Substantial Completion or Final Completion of the Work or a portion of the Work designated by County within the Contract Time; (2) a Fragnet; (3) the number of Days of extension sought by Contractor as a Contract Adjustment to the Contract Time; (4) a computation of the Days of Compensable Delay multiplied times the liquidated damages payable to Contractor pursuant to Section 3.3 of the Construction Contract, if any, sought by Contractor; (5) a statement that Contractor has complied with the requirements of the General Conditions for written notice of Delays, along with the dates and copies of such notices; (6) the measures taken by Contractor and Subcontractors to prevent or minimize the Delay; and (7) Contractor's recommendations for reordering or re-sequencing the Work to avoid or minimize further Delay.

**1.1.145 Unexcused Delay.** "Unexcused Delay" means any Delay that is not a Compensable Delay or Excusable Delay or that constitutes a Compensable Delay or Excusable Delay for which Contractor is not entitled to a Contract Adjustment to the Contract Time, including, without limitation, the following: (1) Delay caused by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents; (2) Delay for which Contractor has failed to provide a timely and complete Notice of Delay or Request for Extension;



or (3) Delay associated with any circumstances where the costs or risk associated with such circumstances are designated in the Contract Documents as being at Contractor's risk or Contractor's Own Expense.

**1.1.146 Unilateral Change Order.** "Unilateral Change Order" means a writing signed by County in accordance with Article 7, below, in which County unilaterally sets forth its Good Faith Determination of the undisputed portion of an otherwise disputed Contract Adjustment.

**1.1.147 Work.** "Work" means all labor, materials, equipment, services, permits, licenses, taxes and other things necessary for Contractor to perform its obligations under the Contract Documents, including, without limitation, any Changes requested by County, in accordance with the Contract Documents and all Applicable Laws. The Work may constitute the whole or a part of the Project.

**1.1.148 Worker's Compensation Certificate.** "Worker's Compensation Certificate" means the statement, completed by Bidder in the form included in the Instruction to Bidders, evidencing the Bidder's compliance with the worker's compensation insurance requirements of the Bidding Documents and Applicable Laws.

## **1.2 CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS**

**1.2.1 Design Intent.** The intent of the Contract Documents is for Contractor to provide all items necessary to produce a work of improvement that is complete as a whole and that is, in all of its parts, suitable for use and occupancy for its intended purpose, including, without limitation, all equipment, casework, mechanical, electrical and similar devices of whatever nature, completely installed, hooked-up and made fully operational and functional.

**1.2.2 Complementary.** Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. Any Work called for on the Drawings and not mentioned in the Specifications, or vice versa, shall be performed as though fully set forth in both.

**1.2.3 Technical Words.** Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood construction industry meanings and non-technical words and abbreviations are used in accordance with their commonly understood meanings.

**1.2.4 Trade Names.** It is not the intention of the Contract Documents to go into detailed descriptions of any materials or methods commonly known to the trade under a "trade name" or "trade term." The mere mention or notation of such "trade name" or "trade term" shall be considered a sufficient notice to the Contractor that it will be required to complete the Work so named with all its appurtenances according to first-class practices of the trade.

**1.2.5 Incidental Items.** The naming of any material or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and labor therefor, in accordance with first-class practices of the trade involved, unless specifically noted otherwise.

**1.2.6 Drawing Dimensions.** Figured, derived or numerical dimensions on scale Drawings shall govern over Drawings without figured dimensions. The Drawings shall not be scaled to determine dimensions, and (except in the case of diagrammatic Drawings) dimensions shall be calculated from figures shown on the Drawings. Obvious discrepancies between scale and figured dimensions, not marked "not to scale," must be brought to the Architect's attention before proceeding with the Work affected by the discrepancy. Contractor shall carefully check and compare all portions of the Drawings and Specifications so as to correctly interpolate the intended dimensions for any portion of the Work that is not explicitly dimensioned in the Contract Documents.

**1.2.7 Drawings, Specifications.** In general, the Drawings will show dimensions, positions, and kind of construction and the Specifications will define materials, quality and standards. Work not particularly shown, detailed, marked or specified shall be the same as similar parts that are shown, detailed, marked or specified.

**1.2.8 Typical Work.** Work not particularly shown, detailed, marked or specified shall be the same as similar parts that are shown, detailed, marked or specified.

**1.2.9 Divisions of the Work.** All the Work mentioned or indicated in the Contract Documents shall be performed by Contractor as part of the Work unless specifically indicated in the Contract Documents to be done by others. The organization of the Specifications into divisions, sections and articles and the arrangement of the Drawings shall not control Contractor in dividing the Work among the Subcontractors or in establishing the extent of the Work to be performed by the Subcontractors.

**1.2.10 Applicable Laws.** Compliance with Applicable Laws shall be considered as a part of the Work.

**1.2.11 Interpretations of Laws.** In the event of a conflict between or among Applicable Laws governing performance of the Work, the more stringent shall govern. Contractor assumes, at Contractor's Own Expense, sole responsibility for, and the risk associated with, interpretations of Applicable Laws made by Contractor not predicated on written orders issued by Governmental Authorities that by their terms are applicable to the Project, including, without limitation, interpretations or assumptions made by Contractor based on decisions, orders or approvals (written or unwritten) issued by or on behalf of Governmental Authorities in connection with work on other projects or properties near or in the general vicinity of the Site.

**1.2.12 Modifiers.** The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an." If a modifier or an article is not included in one statement and appears in another, it is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters whether or not non-limiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

**1.2.13 Singular, Gender, Captions.** When appropriate to the context, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust or other legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only as a matter of reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

**1.2.14 Cross-References.** Any cross-references indicated between various paragraphs or other portions of the Specifications, Drawings or other Contract Documents are provided for the convenience of Contractor and shall not be deemed to be all-inclusive.

**1.2.15 Diagrammatic Design.** Drawings and diagrams for mechanical, plumbing, electrical, fire sprinkler, fire alarm and low voltage Work shall be considered as diagrammatic only and shall not be used for any structural guidance or physical layout. Because such Drawings are diagrammatic, Contractor shall be responsible to provide any and all numbers and lengths of fittings, wire, conduit, connections, attachments or similar materials or devices needed to complete the Work, without Contract Adjustment, whether or not they exceed the numbers of pieces or the lengths indicated by such Drawings. Contractor is solely responsible to carefully plan and coordinate in advance, by means of coordination drawings prepared by Contractor or a Subcontractor, the installation of any Work shown diagrammatically and shall do so in such a manner as to make maximum use of the space available and anticipate and avoid wherever possible conflict and interferences among such portions of the Work and with other portions of the Work, including structural members.

**1.2.16 Demolition.** Existing Improvements at the Site of which no specific description is made in the Contract Documents, but which could be reasonably assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed of by Contractor without Contract Adjustment. If Contractor is unsure whether a specific Existing Improvement at the Site which is not specifically described in the Contract Documents should be removed and disposed of, Contractor shall promptly ask the County whether such Existing Improvement is to be removed or remain in place, and shall comply with any directive given in response.

**1.2.17 Omissions.** Items missing from the Contract Documents shall nevertheless be provided by the Contractor, without Contract Adjustment, to the extent reasonably inferable from the Contract Documents as being necessary to satisfy the Design Intent.

1.2.18 **Conflicts.** Notwithstanding the provisions of Paragraph 1.2.19, below, in the event of conflict between any of the Contract Documents, the provision placing a more stringent requirement or greater burden on the Contractor or requiring the greater quantity or higher quality material or workmanship shall prevail, unless otherwise directed by the County in writing.

1.2.19 **Order of Precedence.** Conflicts that cannot be resolved in accordance with the rules of interpretation set forth elsewhere in this Section 1.2, shall be interpreted in accordance with the following order of precedence (the first being the highest order of precedence):

.1 Applicable Laws (provided, however, and notwithstanding Subparagraph 1.2.19.10, below, where the Contract Documents or manufacturer's recommendations or specifications require standards higher than those of Applicable Laws, the Contract Documents or manufacturer's recommendations or specifications shall control);

.2 Change Orders, Unilateral Change Orders and Construction Change Directives;

.3 Addenda;

.4 Construction Contract;

.5 Supplementary Conditions;

.6 General Conditions;

.7 General Requirements;

.8 Specifications;

.9 Drawings, subject to the following: (1) large scale plans and details take precedence over small scale Drawings in all cases; (2) full scale Drawings have precedence over both large and small scale Drawings in all cases; (3) detailed Plans and/or Drawings shall have precedence over general Plans and/or Drawings; (4) architectural and structural Drawings take precedence over electrical and mechanical Drawings in regard to location and arrangement of fixtures, outlets, and equipment; and (5) electrical and mechanical Drawings take precedence in describing and specifying equipment and in describing the diagrammatic requirements;

.10 standard and reference specifications which include industry norms, such as, but not limited to, ANSI and ASTM; and

.11 Reference Documents.

1.2.20 **Conditions Precedent.** Wording used in the Contract Documents indicating that a right of the Contractor or an obligation of the County is subject to or conditioned upon the occurrence of a condition or event, whether or not such condition or event is within the control of Contractor, County or others and whether or not such condition or event is expressly stated to be a "condition precedent", shall be understood and interpreted to mean that the stated condition or event is a condition precedent to the existence, arising, performance and exercise of such right or obligation.

### 1.3 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.3.1 **Property of County.** Subject to the provisions of Paragraph 2.4.4, below, all Design Documents, Contract Documents and Project Documents that are prepared by Contractor or a Subcontractor, of any Tier, for use in connection with the Project, including any designs, building designs or other depictions underlying or shown in them, and the Intellectual Property Rights thereto, shall be deemed the sole and exclusive property of County and ownership thereof is irrevocably vested in County, whether the Project is executed or not.