

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

765



Reviewed by
CIP TEAM
Gerena Chou

FROM: Economic Development Agency

SUBMITTAL DATE:
August 16, 2012

SUBJECT: Slope Armor Protection for the Larry D. Smith Correctional Facility – Approval of Plans and Specifications, Adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and Project Budget

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the plans and specifications for construction of the Larry D. Smith Correctional Facility Slope Armor Protection Project and authorize the Clerk of the Board to advertise for bids;
2. Adopt a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) for Environmental Assessment No. FM08720000139 based on the findings incorporated in the Initial Study and the conclusion that the project will not have a significant impact on the environment;

(Continued)

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 2,033,100	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13

COMPANION ITEM ON BOARD AGENDA: No	
SOURCE OF FUNDS: (CORAL) 1985 ACES Interest Earnings	Positions To Be Deleted Per A-30 <input type="checkbox"/>
	Requires 4/5 Vote <input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL FISCAL PROCEDURES APPROVED
BY: MARSHAL VICTOR
8/13/12 PAUL ANGULO, CPA, AUDITOR-CONTROLLER
DATE: 8/15/12
Departing: ANURU E. WONG

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

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Buster and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Benoit and Ashley
Nays: None
Absent: Stone
Date: August 28, 2012
xc: EDA, CIP, Auditor, Recorder

Kecia Harper-Ihem
Clerk of the Board
By: Deputy

Prev. Agn. Ref.: 3.3 of 2/01/11; 3.61 of 11/02/10 | District: 5/5 | Agenda Number: **3.29**

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

RECOMMENDED MOTION: (Continued)

3. Consider the Addendum to the Mitigated Negative Declaration for Environmental Assessment No. FM08720000139;
4. Direct the Clerk of the Board to file the attached Notice of Determination with the County Clerk for posting;
5. Upon completion of the bid process, authorize the Assistant County Executive Officer/EDA to submit the contract for award of the bid, to the lowest responsive and responsible bidder, to the Chairman of the Board, and authorize the Chairman to execute the agreement on behalf of the Board; provided that, if any of the following occur, the award will be submitted to the Board for action: there is a bid protest, the lowest bid exceeds the estimated construction budget, the low bidder is disqualified, two or more bids are the same and are the lowest, or a bidder requests relief from its bid due to an error; and
6. Approve the total project budget of \$2,033,100.

BACKGROUND:

On November 2, 2010, the Board of Supervisors approved In-Principle, the design work for slope armor protection along the northern bank of Smith Creek in order to protect the recently completed Larry D. Smith Correctional Facility Expansion No. 3 from flood damage.

On February 1, 2011, the Board of Supervisors approved a budget of \$228,100 for design and design support services for the Slope Armor Protection for the Larry D. Smith Correctional Facility project. The Economic Development Agency (EDA) selected RBF Consulting to provide engineering design services for the project.

RBF has completed the drawings and specifications, and EDA requests approval to solicit bids for construction of this project. In order to keep the project moving and meet project schedule commitments, staff recommends the Board of Supervisors authorize the Assistant County Executive Officer/EDA to determine award of the project in accordance with Board Policy B-11, and authorize the Chairman of the Board to execute the agreement on behalf of the Board of Supervisors, provided that the lowest bid falls within the allotted project budget amount for construction.

Staff has prepared an Initial Study to assess the potential environmental effects of the project. The Initial Study indicated all issues of environmental concern can be adequately mitigated to a level of insignificance.

The Initial Study and Proposed Mitigated Negative Declaration (IS/MND) has been distributed and reviewed in accordance with State CEQA guidelines and the notice has been published in the Press Enterprise newspaper.

(Continued)

BACKGROUND: (Continued)

There has been a minor change in the design of the project and therefore an addendum to FM08720000139 was prepared and processed in accordance with the California Environmental Quality Act (CEQA) Public Resources Code Sections 2100 et seq., and the State CEQA Guidelines (California Code of Regulations Sections 15000 et seq.). The analysis contained in the addendum determined that no additional effects would occur than those identified in the 2012 IS/MND and no additional mitigation and monitoring is required.

PROJECT BUDGET:

The approximate allocation of the project budget is as follows:

Design Fee	98,100
District Plan Review	30,173
Construction	1,450,000
Project Management	80,000
Special Inspection Testing	30,000
Riverside County Flood Control Inspection	60,000
Regulatory Permitting/Mitigation	100,000
<u>Contingency</u>	<u>184,827</u>
TOTAL	\$2,033,100

FINANCIAL IMPACT:

Sufficient funds for this project are budgeted for FY 2012/13. All costs associated with this project will be fully funded through (CORAL) 1985 ACES Interest Earnings, thus no net county costs will be incurred.

Attachments:

Specifications
CEQA Notice of Determination – Send to State Clearinghouse
CEQA Notice of Determination – Send to County Clerk



Notice of Determination

To: Office of Planning and Research
For U.S Mail: Street Address:
P.O. Box 3044 1400 Tenth St.
Sacramento, CA 95812-3044 Sacramento, CA 95814

From: Public County of Riverside
Agency: Economic Development Agency
Address: 3043 10th Street, 4th Floor
Riverside, CA 92501
Contact: John Alfred
Phone: (951) 955-4844

County Clerk
County of: Riverside
2724 Gateway Drive
P.O. Box 751
Address: Riverside, CA 92502-0751

Lead Agency (if different from above):
Address: _____
Contact: _____
Phone: _____

SUBJECT: Filing of Notice of Determination in Compliance with Section 21108 or 21152 of the public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): 2012061059

Project Title: Smith Creek Slope Armor Project

Project Location (include county): Community of Banning, Riverside County, California

Project Description:

The Smith Creek Slope Armor Protection Project involves the installation of embankment protective measures along the northern bank of Smith Creek adjacent to the Larry David Smith Correctional Facility, in the Community of Banning. To eliminate future slope failure, the Project proposes the construction of a 2:1 slope of pervious, loose riprap consisting of 3-1/2 foot (boulder size) of 1/2-ton class rock extending to a depth of approximately 10 feet below Smith Creek wash, and to extend 1,100 feet along the northern embankment of Smith Creek.

This is to advise that the County of Riverside Board of Supervisors approved the above project on

Lead agency or Responsible Agency

8/28/12
(tentative date)

and has made the following determinations regarding the above described project:

1. The project will will not have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures were were not made a condition of the approval of the project.
4. A Mitigation reporting or monitoring plan was was not adopted for this project.
5. A statement of Overriding Considerations was was not adopted for this project.
6. Findings were were not made pursuant to the provisions of CEQA.

This is to certify that the Final EIR with comments and responses and record of project approval, or the Negative Declaration, is available to the General Public at:

General Public at: County of Riverside
Economic Development Agency
3043 10th Street, 4th Floor
Riverside, CA 92501

Signature: (Public Agency)  Title: Board Assistant

Date: 8/28/12 Date received for filing at OPR: _____

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.

Revised 2005

RIVERSIDE COUNTY CLERK & RECORDER

**AUTHORIZATION
TO BILL
BY JOURNAL VOUCHER**

Original Negative Declaration/Notice of
Determination was routed to County
Clerks for posting on.

8/30/12
Date

KD
Initial

Project Name: Smith Creek Slope Armor Project Addendum
Project Number: FM08720000139- Addendum to ISMND

Accounting String: 536780 – 30100 – 7200800000 – FM08720000139 – 0000000000000000

- **County Clerk Filing Fee only \$64.00**
(Original NOD CDFG fees already paid)

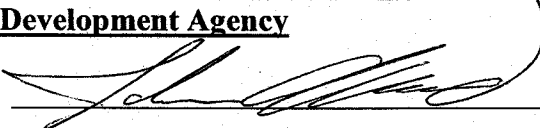
DATE: August 14, 2012

AGENCY: Riverside County Economic Development Agency

THIS AUTHORIZES THE COUNTY CLERK & RECORDER TO BILL FOR FILING AND HANDLING FEES FOR THE ACCOMPANYING DOCUMENT(S).

NUMBER OF DOCUMENTS INCLUDED: One (1)

AUTHORIZED BY: John Alfred, Acting Senior Environmental Planner, Economic Development Agency

Signature: 

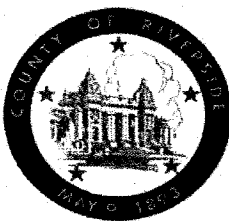
PRESENTED BY: Vikki Kuntz, Environmental Planner Economic Development Agency

-TO BE FILLED IN BY COUNTY CLERK-

ACCEPTED BY: -

DATE: -

RECEIPT # (S) -



Notice of Determination

To:
 Office of Planning and Research
For U.S Mail: P.O. Box 3044
Sacramento, CA 95812-3044

Street Address: 1400 Tenth St.
Sacramento, CA 95814

From:
Public County of Riverside
Agency: Economic Development Agency
Address: 3043 10th Street, 4th Floor
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Contact: John Alfred
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County of: Riverside
2724 Gateway Drive
P.O. Box 751
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Lead Agency (if different from above):
Address: _____
Contact: _____
Phone: _____

SUBJECT: Filing of Notice of Determination in Compliance with Section 21108 or 21152 of the public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): 2012061059

Project Title: Smith Creek Slope Armor Project Addendum

Project Location (include county): Community of Banning, Riverside County, California

Project Description:

The Smith Creek Slope Armor Protection Project involves the installation of embankment protective measures along the northern bank of Smith Creek adjacent to the Larry David Smith Correctional Facility, in the Community of Banning. To eliminate future slope failure, the Addendum proposes to evaluate the proposed design change, which is the change from loose riprap boulder and rock, to fully grouting slope areas for long-term post construction maintenance of the embankment. No other changes to the previously approved project are proposed.

This is to advise that the County of Riverside Board of Supervisors approved the above project on

Lead agency or Responsible Agency

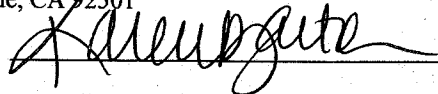
8/28/12 and has made the following determinations regarding the above described project:
(tentative date)

1. The project will will not have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 An Addendum was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures were were not made a condition of the approval of the project.
4. A Mitigation reporting or monitoring plan was was not adopted for this project.
5. A statement of Overriding Considerations was was not adopted for this project.
6. Findings were were not made pursuant to the provisions of CEQA.

This is to certify that the Final EIR with comments and responses and record of project approval, or the Negative Declaration, is available to the General Public at:

General Public at: County of Riverside
Economic Development Agency
3043 10th Street, 4th Floor
Riverside, CA 92501

Signature: (Public Agency)



Title:

Board Assistant

Date:

8/28/12

Date received for filing at OPR:

Authority cited: Sections 21083, Public Resources Code.
Reference Section 21000-21174, Public Resources Code.

Revised 2005



**ADDENDUM NO. 1 – SMITH CREEK SLOPE ARMOR PROJECT SCH#2012061059
INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION**

INTRODUCTION

The County of Riverside, Economic Development Agency prepared an Initial Study/ Mitigated Negative Declaration for the Smith Creek Slope Armor Project. The Initial Study and Mitigated Negative Declaration evaluated the impacts of the installation of embankment protective measures along the northern bank of Smith Creek adjacent to the Larry D. Smith Correctional Facility (LDS), within the unincorporated portion of Banning, County of Riverside, California (figure 1). Since the preparation and circulation of the IS/MND, changes to the embankment design were added at the request of the Riverside County Flood Control and Water Conservation District (RCFCWCD).

The purpose of this addendum is to evaluate the proposed design change, which is the change from loose riprap boulder and rock, to fully grouting slope areas for long-term post construction maintenance of the embankment. No other changes to the previously approved project are proposed.

STATUTORY BACKGROUND

Under the California Environmental Quality Act (CEQA), an addendum to a certified Environmental Impact Report (EIR) or a Negative Declaration is needed if minor technical changes or modifications to the proposed project occur (CEQA Guidelines §15164). An addendum is appropriate only if these minor technical changes or modifications do not result in any new significant impacts or a substantial increase in severity of previously identified significant impacts. The addendum need not be circulated for public review (CEQA Guidelines §15164[c]); however, an addendum is to be considered along by the decision-making body prior to making a decision on the project (CEQA Guidelines §15164[d]).

This Mitigated Negative Declaration Addendum demonstrates that the environmental analysis, impacts, and mitigation requirements identified in the Smith Creek Slope Armor Mitigated Negative Declaration remain substantively unchanged by the situation described herein, and supports the finding that the proposed project does not raise any new issues and does not exceed the level of impacts identified in the previous Mitigated Negative Declaration.

ENVIRONMENTAL ANALYSIS

The proposed project modification is a design change to the slope armor revetment where the previously proposed loose riprap boulder and rock design, it will now be fully grouted, as requested by RCFCWCD to support required maintenance activities. Per RCFCWD, by changing the slope revetment from loose riprap to fully grouted, it will provide further protection from slope erosion, further reduce sediment loading into Smith Creek and ensure the slope embankment will withstand a 100 year flood event. The fully grouted design meets the required RCFCWCD design specifications in order to facilitate RCFCWCD's on-going maintenance activities and will not impact the construction schedule. Water recharge within the creek will remain the same; no impacts to pre-development hydrology will occur. The fully grouted slope armor revetment construction will not result in any new significant impacts or



cause a substantial increase in the effects evaluated in the Initial Study completed in June 2012 (RCFCWCD, June 2012).

CEQA FINDINGS

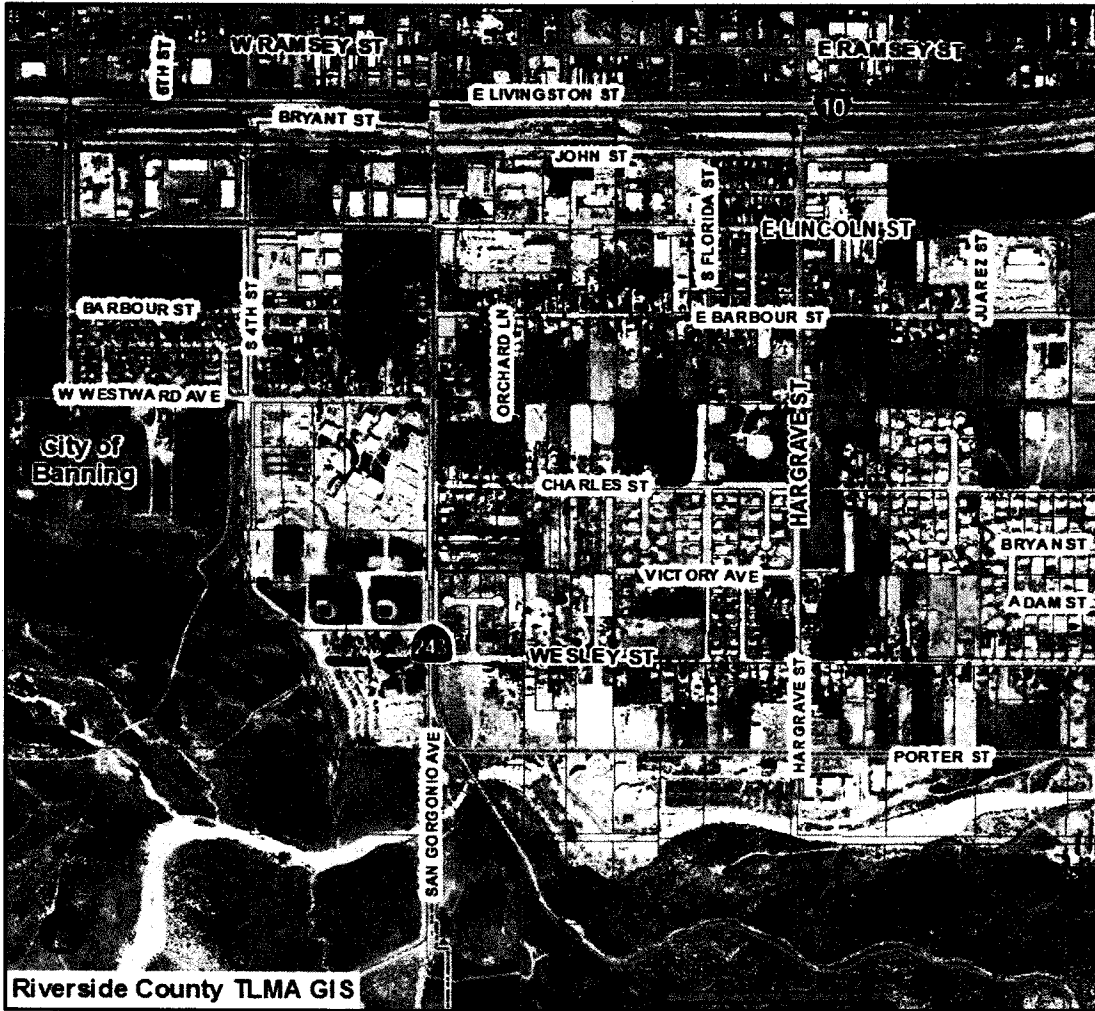
The proposed project meets the criteria established in Public Resources Code Sections 15162 and 15164 of the CEQA Guidelines for an addendum to a Negative Declaration. Based on substantial evidence in light of the whole record, it is determined that:

1. No substantial changes are proposed which will require major revisions of the previous negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
2. No substantial changes occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
3. There is no new information of substantial importance, which was not shown or could not have been known with the exercise of reasonable diligence at the time the previous negative declaration was adopted as complete that shows that:
 - a. The project will have one or more significant effects not discussed in the previous Negative Declaration.
 - b. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative.

Based on the discussion provided above, no subsequent changes are proposed or would occur that necessitate the preparation of a subsequent negative declaration.



FIGURE 1

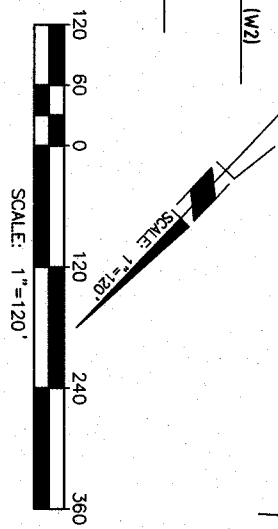
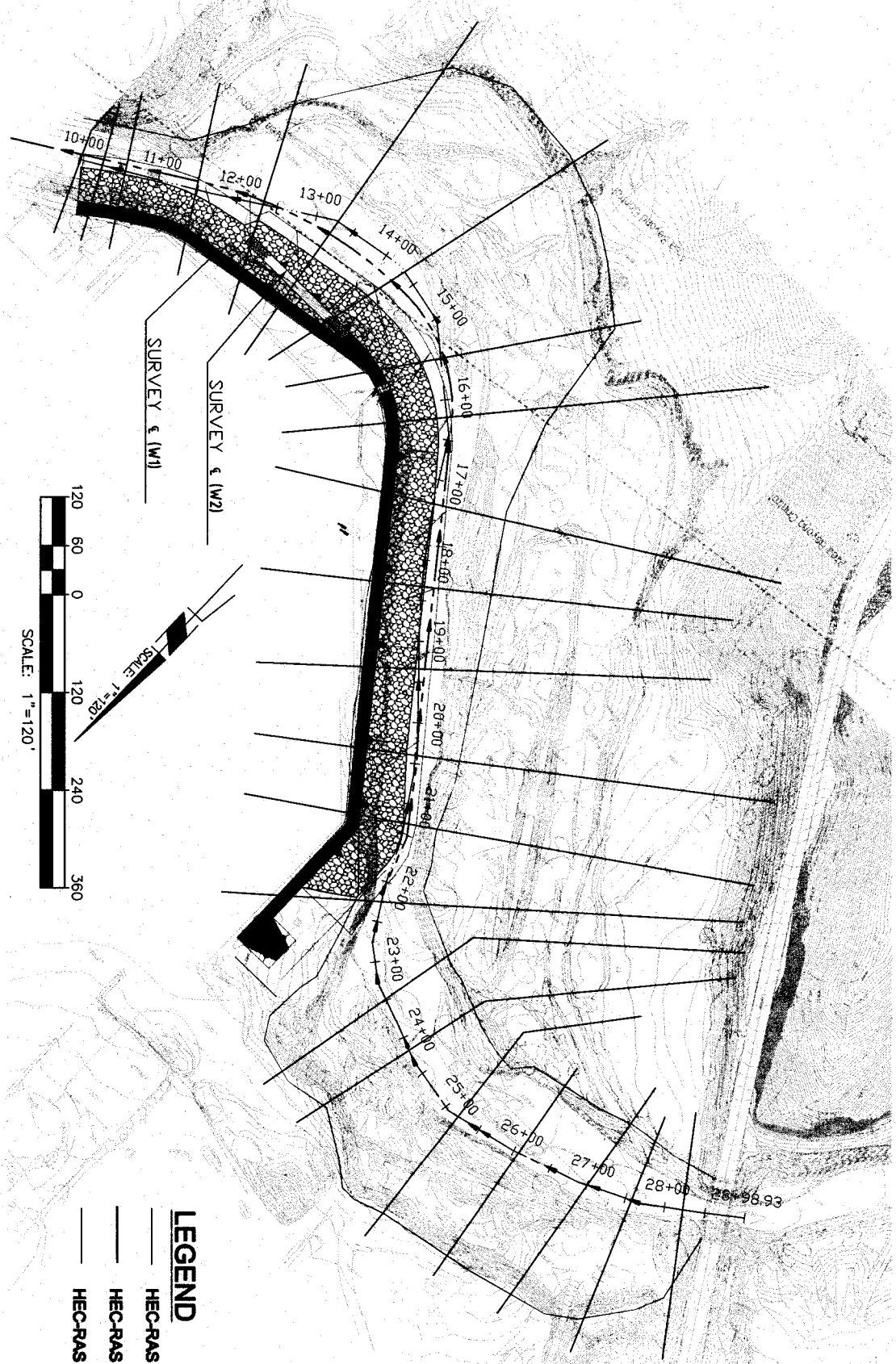


PROJECT LOCATION MAP

Figure 2



PLANNING & DESIGN & CONSTRUCTION
RBF COMPANY
1000 ALBANY AVENUE
ANN ARBOR, MI 48106-1500
PH: 734.769.1000 FAX: 734.769.1001



LEGEND

- HEC-RAS Centerline
- HEC-RAS bank Lines
- HEC-RAS Cross-sections

EXHIBIT 1
SMITH CREEK ARMOR
HEC-RAS CROSS-SECTIONS MAP

SPECIFICATIONS AND CONTRACT DOCUMENTS
FOR

LARRY D. SMITH CORRECTIONAL FACILITY SLOPE ARMOR
PROTECTION PROJECT - FM08720000139



PREPARED BY

COUNTY OF RIVERSIDE
ECONOMIC DEVELOPMENT AGENCY

FORM APPROVED COUNTY COUNSEL

BY: Marshall Victor 8/7/12
MARSHAL VICTOR DATE

AUG 28 2012 3.29 pfs

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NOTICE INVITING BIDS

NOTICE IS HEREBY GIVEN that the County of Riverside ("County") invites sealed Bids for the construction of the following project ("Work"):

Larry D. Smith Slope Armor Protection (FM08720000139)

Bids shall be prepared in conformance with the Instructions to Bidders and other Bidding Documents. Bids must be received, by hand delivery or mail, by the Clerk of the Board located on the 1st floor of the County Administrative Center, 4080 Lemon Street, Riverside, CA 92501, no later than the Bid Closing Deadline of **2:00 p.m.** on **9/27/12**, to be thereafter on said date and at said location publicly opened and read aloud. The Bidder assumes sole responsibility for timely receipt of its Bid.

On and after 08/29/12, and up to seventy-two (72) hours prior to the Bid Closing Deadline, copies of Bidding Documents will be available to Bidders for pick-up by Bidder at, or for mailing to Bidder upon written request by Bidder submitted to, A&I Reprographics, 898 Via Lata, Suite L, Colton, CA 92324, (909) 514-0704 or <http://dfs.aandirepro.com>. At the time of such pick-up or request for mailing, a non-refundable fee of eighty dollars (\$80.00) for each set of Bidding Documents shall be paid by Bidder by cash or by check or money order made payable to A&I Reprographics. The Bidding Documents may also be viewed in person between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday (except Holidays) at A&I Reprographics.

A mandatory Pre-Bid Conference will be conducted on **September 12, 2012**, commencing promptly at **10:00 a.m.**, at **1627 S. Hargrave Street, Banning, CA 92220**. **Attendance at the mandatory Pre-Bid Conference is required as a condition of bidding.** Sign language services are available for the Pre-Bid Conference upon written request received by e-mail at dlombardi@rivcoeda.org at least three (3) business days prior to the Pre-Bid Conference.

The Bidder receiving the Award by the County is required:

- (1) to furnish a Performance Bond and Payment Bond as provided in the Instructions to Bidders and other Bidding Documents;
- (2) both at the time Bidder submits its Bid and other Bid Submittals and at the time of Award, to: (a) hold a contracting license, active and in good standing, issued by the Contractors State License Board for the State of California for the following license classification(s): A-General Engineering Contractor; and (b) hold, or designate a Subcontractor that holds, the certification(s) required by Applicable Laws to perform the following work: Concrete, Earthwork; and
- (3) to comply with the provisions of the California Labor Code, including, without limitation, Sections 1773.1, 1774, 1775 and 1776 of the California Labor Code and including, without limitation, the obligations to pay the general prevailing rates of wages in the locality in which the Work is to be performed and comply with Section 1777.5 of the California Labor Code governing employment of apprentices. Copies of the prevailing rates of per diem wages are on file at California State Department of Industrial Relations, 464 West Fourth St., Suite 348, San Bernardino, CA 92401, and are available to any interested party on request.

Substitution of securities for any moneys withheld by County shall be permitted as provided for by Section 22300 of the California Public Contract Code.

Capitalized terms used herein shall have the meanings assigned to them in the Bidding Documents.

For further information, contact:

Economic Development Agency, Riverside Centre, 3403 Tenth Street, 4th Floor, Riverside, CA 92501

INSTRUCTIONS TO BIDDERS

ARTICLE 1 GENERAL PROVISIONS

1.1 DEFINITIONS

Capitalized terms used on the Bidding Documents shall have the meanings assigned to them in the forms of Construction Contract and General Conditions that are included in the Bidding Documents. Capitalized terms not so defined shall have the meanings assigned to them in, or if none is assigned as reasonably interpreted according to the context of, the portion of the Bidding Documents where such terms are used.

1.2 SUMMARY OF PROJECT

1.2.1 Project Description. The Project to be constructed generally consists of the following: Installation of embankment protective measures including construction of a 2:1 slope of grouted riprap consisting of 1/4-1 ton class rock extending to a depth of approximately 10 feet below Smith Creek wash. The identifying name of the Project is Larry D. Smith Correctional Facility Slope Armor Protection Project.

1.2.2 Contract Time. Substantial Completion of the Work must be achieved within ninety (90) Days from the Date of Commencement. Final Completion must be achieved within thirty (30) Days after the occurrence of Substantial Completion.

1.2.3 Liquidated Damages. The Construction Contract includes provisions: (1) permitting the County to assess liquidated damages to the Contractor of \$1,000.00 per Day for each Day after the expiration of the Contract Time for Substantial Completion that the Work is not Substantially Completed by Contractor; and (2) for payment by County to Contractor of liquidated damages to Contractor of \$1,000.00 per Day for each Day of Compensable Delay for which Contractor is entitled to a Contract Adjustment of the Contract Time and Contract Price.

1.2.4 County Furnished Materials. County reserves the right to elect to furnish the following County Furnished Materials for incorporation by Contractor as part of the Work pursuant to an assignment of one or more County Materials Contract(s) in accordance with Section 2.5 of the General Conditions: N/A. Said County Materials Contract(s) are available for review by Bidders at N/A. Bidder is solely responsible to familiarize itself prior to submission of its Bid with the terms and conditions of such County Materials Contract(s). County shall notify the successful Bidder prior to Award if the County elects to assign any of such County Materials Contracts to Contractor for incorporation Contractor of the County Furnished Materials as part of the Work.

1.2.5 Licensing. The Bidder to whom the Construction Contract for the Work is Awarded by the County is required, both at the time of the Bid Closing Deadline and at the time of Award, to: (1) hold a contracting license, active and in good standing, issued by the Contractors State License Board for the State of California for the following license classification(s): A-General Engineering Contractor; and (2) hold, or designate in the Designation of Subcontractors a Subcontractor that holds, the certification(s) required by Applicable Laws to perform the following work: Concrete, Earthwork.

1.2.6 No Warranty by County. Bidders are solely responsible to satisfy themselves as to the suitability of any estimates, projections, budgets, criteria, surveys, reports, test data, recommendations, opinions, and other information provided by County relating to the Site, Work or Project (including, without limitation, all information contained in any Reference Documents) and nothing stated in the Bidding Documents, Contract Documents or in any other information provided by the County shall be construed as implying the creation or existence of any warranty, express or implied, on the part of the County with respect to the completeness, accuracy or sufficiency thereof.

**ARTICLE 2
BIDDER'S REPRESENTATIONS**

2.1 THE BIDDER BY SUBMITTING ITS BID REPRESENTS THAT:

2.1.1 Bidding Documents. The Bidder has, in its capacity as contractor and not a design professional, carefully and thoroughly examined, compared and understood the Bidding Documents (including, without limitation, the Drawings, Specifications and Reference Documents identified in the Bidding Documents), and acting in that capacity has satisfied itself that the Bidding Documents are free of any errors, conflicts, ambiguities, lack of coordination and violations of Applicable Laws that might affect the Bidder's ability to complete the Work for the amount of its Bid and within the time period(s) for construction required by the Bidding Documents.

2.1.2 Site Information. In order to fully acquaint itself with all conditions, restrictions, obstructions, difficulties and other matters which might affect the Bidder's ability to complete the Work for the amount of its Bid and within the time period(s) for construction required by the Bidding Documents, the Bidder has carefully and thoroughly inspected: (1) the Site and its surroundings; (2) all Existing Improvements on the Site and their existing uses by the County, its invitees and the public; (3) routes of ingress and egress to and from the Site; (4) local conditions in the vicinity of the Site (including, without limitation, sources and availability of labor, materials and equipment); (5) the status of construction, if any, that is in-progress at the Site; and (6) all reports, data, as-built drawings and other information (including, without limitation, the Reference Documents identified in the Bidding Documents) concerning visible and concealed conditions (including, without limitation, locations and capacities of utility sources and lines) above and below the surface of the ground and in Existing Improvements that have been made available by the County to Bidders or that are disclosed by public records of the County of Riverside or the City in which the Project is located, and has correlated its observations with the requirements of the Bidding Documents.

2.1.3 Bid Compliance. The Bid and other Bid Submittals are in compliance with the Bidding Documents.

2.1.4 No Exceptions. The Bid is based upon the materials, equipment, systems and other work required by the Bidding Documents, without any exception, exclusion or qualification.

2.1.5 Legal Status. If the Bidder is a corporation, or if one or more of the partners or joint venturers of the Bidder (where the Bidder is a partnership or joint venture) is a corporation, such corporation(s) is(are) duly incorporated, authorized to do business and in good standing under the laws of the State of California.

2.1.6 Licensing. Bidder currently holds and, if and when an Award is made to Bidder, Bidder will hold at the time of Award, a license, active and in good standing, issued by the Contractors State License Board for the State of California authorizing the Bidder to contract to perform work in the requisite license classification(s) stated in the Notice Inviting Bids and/or in these Instructions to Bidders.

2.1.7 Due Authorization. The person or persons signing the Bid and other Bid Submittals on behalf of the Bidder are authorized to do so on behalf of the Bidder.

2.1.8 Balanced Bid. Cost breakdowns of the Bid that are provided by the Bidder are balanced, reflecting in each line item category of Work a reasonable estimate of the Bidder's cost commitments to perform that category of Work and a proportionate share of overhead and profit.

2.1.9 Labor Compliance. The Bid includes sufficient funds to enable Bidder to comply with, and Bidder will comply with, all of the applicable provisions of the California Labor Code, including,

without limitation, payment of prevailing wages, maintenance and submission of weekly certified payrolls and hiring of apprentices.

2.2 MISREPRESENTATION BY BIDDER

The County may determine as unresponsive any Bid in which any statement or representation made or incorporated by reference in the Bid, including any Bid Submittal comprising the Bid, is false, incorrect or materially incomplete and misleading.

ARTICLE 3 BIDDING DOCUMENTS

3.1 COPIES

3.1.1 Availability. Copies of Bidding Documents will be available, on and after 8/29/12, and up to seventy-two (72) hours prior to the Bid Closing Deadline, for pick-up by Bidder at, or for mailing to Bidder upon written request by Bidder submitted to, A&I Reprographics, 898 Via Lata, Suite L, Colton, CA 92324. At the time of such pick-up or request for mailing, a non-refundable fee of eighty dollars (\$80.00) for each set of Bidding Documents shall be paid by Bidder by cash or by check or money order made payable to A&I Reprographics. The Bidding Documents may also be viewed in person between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday (except Holidays) at A&I Reprographics. Bidders may retain their copies of Bidding Documents.

3.1.2 Sub-Bidders. Unless otherwise stated in the Notice Inviting Bids, the County assumes no obligation to distribute Bidding Documents directly to Sub-Bidders.

3.1.3 Complete Sets. The Bidder shall use complete sets of Bidding Documents in preparing its Bid. The County assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

3.1.4 No License. No license to Bidder is intended or conferred by the County's issuance to Bidders of copies of the Bidding Documents.

3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

3.2.1 Examination by Bidder. The Bidder shall, with reasonable care and diligence in its capacity as a contractor and not a design professional, carefully and thoroughly examine the Bidding Documents and prior to the Bid Closing Deadline report to the County in writing by means of a request for clarification provided in accordance with Paragraph 3.2.3, below, any information contained in the Bidding Documents constituting an error, conflict, ambiguity, lack of coordination or violation of Applicable Laws that might affect the Bidder's ability to complete the Work for the amount of its Bid and within the time period(s) for construction required by the Bidding Documents. Failure by the Bidder to do so shall not relieve the Bidder from its representations set forth in these Instructions to Bidders nor serve as the basis for any claim by the Bidder that it was mistaken or misled in connection with the preparation of its Bid or its planning for construction of the Work.

3.2.2 Pre-Bid Conference. A mandatory Pre-Bid Conference will be conducted on 9/12/12, commencing promptly at 10:00 a.m., at 1627 S. Hargrave Street, Banning, CA 92220. Attendance at the mandatory Pre-Bid Conference is required as a condition of bidding. Sign language services are available for the Pre-Bid Conference upon written request received by e-mail at dlombardi@rivcoeda.org at least three (3) business days prior to the day of the Pre-Bid Conference. Regardless of whether the Pre-Bid Conference is described in the Bidding Documents as mandatory or optional, Bidder shall be deemed charged with knowledge of all facts, circumstances and other information that were apparent, available or provided to Bidders at the Pre-Bid Conference, including, without limitation, any and all of the

physical conditions of the land and Existing Improvements at the Site that were visible or available for inspection or review by the Bidders attending the Pre-Bid Conference.

3.2.3 Requests for Clarification. If the Bidder requires clarification or interpretation of the Bidding Documents, it shall make a written request to County by a request for clarification. All requests for clarification of the Bidding Documents must be submitted, in writing, between the hours of 8:00 a.m. and 4:00 p.m. on any Day, Monday through Thursday (except Holidays) up to, including and no later than the fifth (5th) Day prior to Bid Closing Deadline, by hand delivery, mail, fax or e-mail to the following: EDA-PMO, 3403 Tenth St., 4th Floor, Riverside, CA 92501, (951) 955-4890 fax, dlombardi@rivcoeda.org. No response will be made to requests for clarification received after that time.

3.2.4 Addenda. Interpretations, corrections and changes of the Bidding Documents will be made by Addenda. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding and the Bidder shall not rely upon them.

3.2.5 Communications. The Bidder shall not, at any time during the bidding process following advertisement of the Notice Inviting Bids and prior to issuance of the Notice of Intent to Award, communicate with the County, Architect, County Consultants or any employee or representative of any of them, concerning the Project except by means of a written requests for clarification submitted by Bidder in accordance with Paragraph 3.2.3, above.

3.3 SUBSTITUTIONS

3.3.1 Requests for Substitutions. The Bidder shall make requests for Substitutions on the County's Request for Substitution form included in the Bidding Documents. Such requests shall comply with the requirements of the Bidding Documents, including without limitation, the Plans and Specifications. Without limitation to the other requirements of the Request for Substitution form, requests for Substitutions shall include: (1) a description of the material, equipment or other work that is to be replaced or eliminated by the Substitution; (2) a description of any other changes to the Work, Existing Improvements, the Site or the work of Separate Contractors that would be necessary if the proposed Substitution were incorporated as part of the Work; (3) a statement that the Bidder accepts responsibility for the inclusion in its Bid of all of the costs of implementing the Substitution, including, without limitation, the costs of any related changes to the Work, Existing Improvements, the Site or the work of Separate Contractors; (4) all drawings, performance and test data and other information necessary for an evaluation of the Substitution by the County, Architect and County Consultants; and (5) a statement that the Bidder understands and agrees that if the Substitution is not approved and the Bidder submits a Bid, Bidder will provide the Work as specified in the Bidding Documents without such Substitution. The burden of proof of the merit of a proposed Substitution is entirely upon the Bidder requesting the Substitution.

3.3.2 Deadline for Submission. Any completed Request for Substitution form that Bidders wishes to have considered by County must be submitted, between the hours of 8:00 a.m. and 4:00 p.m. on any Day, Monday through Thursday (except Holidays) up to, including and no later than the seventh (7th) Day prior to the Bid Closing Deadline, in writing, by hand delivery, mail, or fax to the following: EDA-PMO, 3403 Tenth St., 4th Floor, Riverside, CA 92501, (951) 955-4890 fax, dlombardi@rivcoeda.org. No response will be made to any Requests for Substitution form received after that time.

3.3.3 Review by County. To the maximum extent permitted by Applicable Laws, approval or disapproval of a Substitution proposed by a Bidder is in the sole and absolute discretion of the County. The County's decision to approve or disapprove of a proposed Substitution shall be final and binding. An Addendum shall be issued to all Bidders describing any Substitution properly and timely requested prior to the Bid Closing Deadline that is approved by the County. Failure by County to respond to a properly and timely submitted Request for Substitution prior to 2:00 p.m. of the second (2nd) working day before the Bid Closing Deadline shall be automatically deemed to be a disapproval by County thereof.

3.3.4 Standards. In evaluating a Request for Substitution form submitted by a Bidder, the materials, products and equipment described in the Bidding Documents are generally viewed by the County as establishing the standards for function, dimension, appearance and quality to be met by the requested Substitution.

3.3.5 Performance by Bidder. In the event the Bidder has submitted a Request for Substitution form and the request for Substitution is denied, or deemed denied, by the County and the Bidder thereafter submits a Bid and receives the Award, then the Bidder shall execute the Construction Contract and provide the Work as specified, without such Substitution and at no additional cost or expense to the County.

3.3.6 No Postponement. Delays associated with the review, processing or approval of a Request for Substitution form submitted by Bidder shall not entitle Bidder to a postponement of the deadlines set forth in the Bidding Documents.

3.3.7 No Bid Adjustment. Neither approval nor disapproval of a Request for Substitution form shall be grounds for adjustment of a Bid.

3.4 ADDENDA

3.4.1 Transmittal. Addenda will be transmitted by County to all prospective Bidders who (1) attended and signed in at the Pre-Bid Conference (if any) or (2) have submitted a written request to County for notice of Addenda at <http://dfs.aandirepro.com>, including in such request the Bidder's name and address for mailing.

3.4.2 Inspection. Copies of Addenda will also be made available for in-person inspection wherever Bidding Documents are on file for that purpose.

3.4.3 Issuance. Without limitation to the County's right to withdraw its request for Bids, Addenda may be issued up to, but not later than, seventy-two (72) hours prior to the Bid Closing Deadline; provided, however, that an Addendum withdrawing the request for Bids or one which postpones the Bid Closing Deadline may be issued at any time prior to the Bid Closing Deadline.

3.4.4 Receipt by Bidder. Failure of the Bidder to receive any Addendum shall not relieve the Bidder from any of its obligations under its Bid Submittal. The costs of performance by Bidder of all items of Work and other obligations contained in all Addenda issued by County shall be deemed included in the amount of the Bidder's Bid. The Bidder shall identify and list in its Bid all Addenda received and included in its Bid. The Bidder's failure to so acknowledge the receipt of all Addenda in its Bid may be asserted by the County as a basis for determining its Bid non-responsive.

ARTICLE 4 BIDDING PROCEDURES

4.1 PREPARATION OF BIDS

4.1.1 Bid Form. Bidder shall state its Bid price using the Bid Form included in the Bidding Documents. A Bid presented on other forms shall be disregarded.

4.1.2 Blanks. All blanks on the Bid Form shall be legibly executed in a nonerasable medium.

4.1.3 Figures. Sums shall be expressed in a Bid in both words and figures. In case of discrepancy, the amount written in words shall govern.

4.1.4 Alterations. Interlineations, alterations and erasures in a Bid must be initialed by each and all of the signer(s) of the Bid.

4.1.5 Alternative Bids. Alternative Bids will not be accepted unless specifically requested in the Bidding Documents.

4.1.6 Multiple Bids. Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the Bid Security, state in its Bid the Bidder's refusal to accept the Award of less than the combination of Bids stipulated by the Bidder. The Bidder shall make no additional stipulations on or conditions to its Bid Form nor qualify its Bid in any other manner.

4.1.7 Name of Bidder. Each copy of the Bid shall state the legal name of the Bidder and its legal form of business (i.e., sole proprietor, partnership, joint venture or corporation). Bids shall be submitted in the name of Bidder that appears in the Bidder's license issued by the State of California Contractors State License Board for the license classification(s) that the Bidder is required to hold pursuant to the Notice Inviting Bids. Each Bid shall bear the longhand signature and printed name and title of the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

4.1.8 Bid Submittals. Each Bid shall include the following Bid Submittals executed in the manner required by the Bidding Documents:

- .1 Bid Form, in the form specified in the Bidding Documents;
 - .2 Bid Security, consisting of either (a) a Bid Bond, in the form specified in the Bidding Documents, or (b) such other form of Bid Security as is permitted by these Instructions to Bidders;
 - .3 Bid Security Receipt, in the form specified in the Bidding Documents;
 - .4 Designation of Subcontractors, in the form specified in the Bidding Documents;
- and
- .5 Non-Collusion Declaration, in the form specified in the Bidding Documents.
 - .6 Iran Contracting Act Certification

4.1.9 Modifications by Bidder. Changes or additions to the Bid Form, recapitulations of the Work bid upon, conditions or limitations on the Work to be done, alternative proposals or any other modification of the Bid Form not specifically called for by the Bidding Documents may result in the County's rejection of the Bid as being non-responsive. No oral, telephonic, electronic, facsimile or telegraphic modification of any Bid submitted will be considered.

4.1.10 Designation of Subcontractors. The Bidder shall submit, on the Designation of Subcontractors form specified in the Bidding Documents, a list of the proposed Subcontractors and the portion of Work to be done by each Subcontractor as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code Sections 4100 et seq). Unless the Notice Inviting Bids expressly states otherwise, any information requested in the Designation of Subcontractors other than a Subcontractor's name and location of business must be submitted as part of the Bid and may not be submitted after the Bid Closing Deadline. If additional sheets are needed to provide the information requested in the Designation of Subcontractors, they shall be included by Bidder as part of its Bid and shall accompany the Designation of Subcontractors. If bidding of Alternates is called for by the Bidding Documents and the Bidder intends to use different or additional Subcontractors or if acceptance of the

Alternate by County would cause the value of the Work to be performed by a Subcontractor not identified in the Designation of Subcontractors accompanying the Base Bid to exceed the threshold dollar amount required by Applicable Law for listing of Subcontractors, then a separate Designation of Subcontractors form must be submitted for each such Alternate. If the Bidding Documents require the performance of Work for which the Bidder or a Subcontractor must hold a certification required by Applicable Laws to perform the work, and if the Bidder intends to use a Subcontractor holding such certification to satisfy said requirement and to perform such Work, then Bidder shall, without limitation to any other information that may be required by Applicable Laws, include in the Designation of Subcontractors the name of such Subcontractor and a description of the Work requiring such certification that the Subcontractor will be performing.

4.1.11 Builder's All Risk (Course of Construction) Insurance. The Bid Form states whether the Bidder shall include Builder's All Risk (Course of Construction) Insurance for the Project. If the Bid Form states that such insurance shall be included by the Bidder in its Bid, then Contractor shall provide a policy of Builder's All Risk (Course of Construction) insurance coverage that conforms to the requirements set forth in Subparagraph 11.1.1.5 and the other applicable provisions of Article 11 of the General Conditions. NOTWITHSTANDING THE FOREGOING, COUNTY RETAINS THE RIGHT exercised at any time prior to award TO ELECT TO USE ITS OWN BUILDER'S ALL RISK (COURSE OF CONSTRUCTION) INSURANCE and in the event County so elects to deduct the price for such insurance that is stated in Contractor's Bid, or if not so stated the amount included by Contractor for such insurance in the preparation of the Contractor's Bid, from the Contract Price by means of a Contract Adjustment pursuant to Change Order or Unilateral Change Order. If the County so provides the All Risk (Course of Construction) insurance for the Project, then Contractor shall assume the cost of any and all applicable policy deductibles (currently, \$50,000 per occurrence) and shall insure its own machinery, equipment, tools, etc. from any loss of any nature whatsoever.

4.1.12 Interested Bidder. No person, partnership, joint venture, corporation or other association of persons or entities submitting a Bid shall be allowed to submit more than one Bid or be interested in a Bid submitted by any other Bidder. A person, partnership, joint venture, corporation or other association of persons or entities that, in the capacity as a Subcontractor to a Bidder, has quoted a bid price to a Bidder is not disqualified from submitting a proposal or quoting prices to other Bidders or making a Bid as a general contractor for the entirety of the Work. For the purpose of this Paragraph, "interested in" means having a managerial or financial interest in another Bidder.

4.1.13 Prequalification. If the County has stated in the Notice Inviting Bids that bidding is limited only to bidders that were prequalified pursuant to a Prequalification conducted by County, and if Bidder was previously prequalified pursuant to that process to submit a Bid for the Project, then in addition to the requirements of the Bidding Documents the Bidder must comply with any additional requirements for bidding that are set forth in the Prequalification Documents, including, without limitation, compliance by Bidder with any continuing responsibilities for disclosure of any changes in ownership, management or financial condition. If the Bidder has been prequalified to submit a Bid for the Project it shall, if requested by County, submit prior to or with its Bid any certification(s) that the County is authorized to request by the terms of the Prequalification Documents governing the Bidder's prequalification.

4.1.14 Applicable Laws. All Bids must be submitted, filed, made and executed in accordance with Applicable Laws relating to bids for contracts of the nature provided for by the Bidding Documents, whether such Applicable Laws are expressly referred to herein or not.

4.1.15 Non-Transferable. A Bid is non-transferable.

4.2 BID SECURITY

4.2.1 Forms of Bid Security. Each Bid shall be accompanied by a Bid Security in the form of (1) cash, (2) a certified or cashier's check made payable to the County or (3) a Bid Bond (using the form of Bid Bond included in the Bidding Documents) issued by an Admitted Surety, in an amount equal to at least ten percent (10%) of the Bid Amount, as a guarantee that the Bidder, if awarded the Construction Contract, will enter into a Construction Contract with the County and furnish the Performance Bond, Payment Bond and other Post-Award Submittals required by the Bidding Documents. Should the Bidder refuse to enter into the Construction Contract or fail to furnish the Performance Bond, Payment Bond or any other Post-Award Submittal, then the Bid Security shall be forfeited to the County in an amount equal to the difference between the amount of Bidder's Bid Amount and the amount for which the County may procure the work from another Bidder plus the costs to the County of redrafting, redrawing and republishing the Bidding Documents.

4.2.2 Retention by County. The County will have the right to retain the Bid Security of any Bidder to whom an Award is being considered until either (1) the Construction Contract has been executed and the Performance Bond, Payment Bonds and other Post-Award Submittals have been furnished, or (2) all Bids have been rejected.

4.2.3 Return by County. Bid Security of an unsuccessful Bidder will be returned no later than sixty (60) Days after the Award by the County. Bid Security of the successful Bidder will be returned upon signing of a Construction Contract by the Bidder and County and submission by Bidder to the County of the Performance Bond, Payment Bond and other Post-Award Submittals in accordance with the requirements of the Bidding Documents.

4.3 SUBMISSION OF BIDS

4.3.1 Sealed Envelope. All copies of the Bidder's Bid, Bid Security and other Bid Submittals shall be enclosed by the Bidder in a sealed opaque envelope. Said envelope, as well as any other, outer envelope or packaging in which said envelope may have been placed by Bidder or the carrier for delivery, shall be addressed and delivered as provided in the Notice Inviting Bids and shall be clearly and conspicuously labeled with the Project name, the Bidder's name and address and the identifying name of the Project as set forth in Paragraph 1.2.1, above.

4.3.2 Deposit. Bids shall be hand delivered to, or received by mail at, the Clerk of the Board located on the 1st floor of the County Administrative Center, 4080 Lemon Street, Riverside, CA 92501, at any time Monday through Thursday (excepting Holidays) between the hours of 8:00 a.m. to 4:00 p.m. up to the Bid Closing Deadline of 2:00 p.m. on 9/27/12. Bids must be received at the designated location prior to the Bid Closing Deadline. Bids, or any Bid Submittal comprising a Bid, that is received after the Bid Closing Deadline will be returned unopened.

4.3.3 Postponement. The County reserves the right to postpone the Bid Closing Deadline by issuance of an Addendum to the Bidding Documents at any time prior to the Bid Closing Deadline.

4.3.4 Timely Receipt. The Bidder assumes full and sole responsibility for timely receipt of its Bid, including its Bid Security and all other Bid Submittals, at the location designated in the Bidding Documents for receipt of Bid.

4.3.5 Delivery Methods. Deposit of Bids shall be by hand delivery or mail, only. Oral, telephonic, telegraphic, facsimile or other electronic transmission is not permitted.

4.4 WITHDRAWAL OR RESUBMISSION OF BID

4.4.1 Before Bid Closing Deadline. Prior to the Bid Closing Deadline, a Bid may be withdrawn by notice to the County at the place designated for receipt of Bids stated in the Notice Inviting Bids. Such notice shall be in writing and signed by the Bidder. Partial withdrawal of a Bid or any Bid Submittal is not permitted.

4.4.2 After Bid Closing Deadline. Except as otherwise permitted by these Instructions to Bidders, each Bid shall constitute an offer that shall remain open for a period of sixty (60) Days after the Bid Closing Deadline and during that period of time shall not, without the written consent of the County, be modified, withdrawn or canceled by the Bidder.

4.4.3 Resubmission. Withdrawn Bids may be resubmitted up to the Bid Closing Deadline.

4.4.4 Bid Security. If a Bid is withdrawn and re-submitted, the amount of Bid Security shall be based on the Bid Amount based on the Bid as resubmitted.

4.5 BID ALTERNATES

4.5.1 Alternates. The Bidding Documents do do not include Alternates.

4.5.2 Bid Form. If Alternates are included in the Bidding Documents, then a Bid amount for each and every such Alternate shall be included in the spaces provided in the Bid Form for that purpose. If the Bidder determines that the Alternate does not affect the amount of its Base Bid, then the Bidder shall enter "No Change" in the Bid Form.

4.5.3 Basis for Award. Where the Bidding Documents include Alternates, the method checked in the box provided below will be used to determine the lowest Bid price (only wording following a checked box applies):

Award Method #1: The lowest Bid price shall be the lowest Base Bid price without consideration of the Bidder's prices on the Alternates.

Award Method #2: The lowest Bid price shall be the lowest total of the Base Bid price and the following Alternates that will be used for the purpose of determining the lowest Bid price:

1. _____
2. _____
3. _____
4. _____
5. _____

Award Method #3: The lowest Bid price shall be the lowest total of the Base Bid price and the following Alternates taken in the order as shown below which, when the Bidder's amount for the Alternate is added to or deducted from such Base Bid price, are less than, or equal to, the funding amount publicly disclosed by the County before the first Bid is opened:

1. _____
2. _____
3. _____
4. _____
5. _____

Award Method #4: The lowest Bid price shall be determined in a manner that will prevent any information that would identify any of the Bidders or any of their Subcontractors from being revealed to the County before the ranking of Bidders from lowest to highest has been determined.

4.5.4 Bid Escrow Provisions. The following provisions apply only if Subparagraph 4.5.4.1, below, provides that a Bid Escrow will be used for the Project.

.1 Bid Escrow. A Bid Escrow will will not be used for the Project.

.2 Escrow Bid Documents. Escrow Bid Documents, as that term is defined in the General Conditions, shall: (1) be in English; (2) be legible; (3) be detailed and comprehensive, showing a complete breakdown of quantities, prices, productivity calculations, crew sizes, direct and repair labor, plant and equipment usage, general conditions (i.e., direct overhead) costs, indirect overhead and profit and contingencies, and all other numerical factors used to compute the Bid (provided, however, with respect to Bid items having an estimated cost under \$10,000, estimated unit costs are acceptable without detailed cost estimates provided that the indirect costs, contingencies and markups are shown and allocated); (4) if estimates are based, in whole or in part, on a Geological Baseline Report (GBR) or other report on surface or subsurface conditions at the Site, clearly reference any statements, data, opinions or recommendations used or relied upon from the GBR or such other report; and (5) if the Bidder's Bid is based on a price from a Sub-Bidder that exceeds five percent (5%) of the Bid Amount, provide documentation and electronic files from such Sub-Bidder relating to its bid submitted to Bidder that comply with all of the requirements herein for Escrow Bid Documents, in which case such documents and electronic files from such Sub-Bidder shall be considered and submitted by Bidder as part of the Escrow Bid Documents that are required to be submitted pursuant to this Paragraph 4.5.4.

.3 Deposit with County. Each of the Bidders submitting the apparent three (3) lowest Bid prices shall place its Escrow Bid Documents in a sealed container, marked on the outside with (1) the words "Escrow Bid Documents", (2) the name of the Project, (3) Bidder's name and (4) the date of submission. The sealed container with the Escrow Bid Documents shall be delivered by such Bidders to the County, at the place for submission of Bids, within twenty-four (24) hours after the Bid Closing Deadline.

.4 Review by County. County will review the Escrow Bid Documents of the apparent successful Bidder to ensure that the Escrow Bid Documents comply with the requirements of this Paragraph 4.5.4, and any other requirements of the Bidding Documents relating to use of a bid escrow. Such review shall not constitute approval or acceptance by County of the proposed means,

methods, techniques or procedures of the Bidder, confirmation by County that the Escrow Bid Documents comply with the Bidding Documents, nor shall such review or alter any term or condition of the Contract Documents.

.5 Noncompliance by Bidder. Failure by Bidder to comply with any of the requirements of this Paragraph 4.5.4 or any other requirements of the Bidding Documents relating to use of a bid escrow shall be grounds for County to determine that the Bidder's Bid is non-responsive. Without limitation to the foregoing, County shall have the right, in the exercise of its sole and absolute discretion, if it finds that the Escrow Bid Documents submitted by a Bidder do not so comply to: (1) direct that the Bidder submit the required documentation and electronic files within twenty-four (24) hours of written request by County; and/or (2) discuss with the Bidder any questions that may exist concerning the Escrow Bid Documents in an effort to clarify and reconcile the information contained in the Escrow Bid Documents.

.6 Escrow Procedure. The Escrow Bid Documents of the successful Bidder receiving the Award shall be placed and held in storage at a safe and secure location, at the expense of County, for the duration of the performance of the Work and until the later of (1) ninety (90) Days after Final Completion is achieved or (2) final resolution by settlement or final judgment in legal proceedings of all disputes relating to the Construction Contract or Work (the "Escrow Bid Documents Storage Period"). Escrow Bid Documents of the unsuccessful Bidders will be returned to them within sixty (60) Days following Award. Upon expiration of the Escrow Bid Documents Storage Period, County shall destroy or return to Bidder, and shall not retain, copies of that Bidder's Escrow Bid Documents. County will take reasonable steps to protect and preserve the Escrow Bid Documents from damage; however, County shall not be liable for damage or loss occasioned by circumstances beyond the reasonable control of County, such as, without limitation, fire or Acts of God.

.7 Bidder's Warranty and Representation. Submission by a Bidder of its Escrow Bid Documents shall constitute a warranty and representation by such Bidder that it has no other written documents or electronic files containing information used in computing its Bid that are within the definition of Escrow Bid Documents as defined in the Bidding Documents and that Bidder agrees, in the event it receives Award of the Construction Contract, that it shall have no right to submit or offer into evidence in any legal proceedings in support of any request for Contract Adjustment, Claim or other request for any legal remedy or relief, any documentation or electronic files constituting Escrow Bid Documents that were not included in the Escrow Bid Documents submitted by Bidder.

.8 Not Contract Documents. The contents of the Escrow Bid Documents shall not be considered part of the Contract Documents.

.9 Property Rights, Confidentiality. The Escrow Bid Documents are, and shall always remain, the property and confidential information of the Bidder, subject to rights of review by the County and Bidder and other Permitted Uses as further described below. To the maximum extent permitted by Applicable Laws, County shall safeguard the Escrow Bid Documents, and all information contained therein, against disclosure and in so doing shall not disclose the Escrow Bid Documents to anyone who is not an employee, attorney or consultant of the County having a reason and need to review the Escrow Bid Documents in connection with one or more of the Permitted Uses.

.10 Permitted Uses. The Escrow Bid Documents may be opened, examined and used at any time by County or Bidder (including, without limitation, admission into evidence in any legal proceedings) for the purposes of aiding in an evaluation by County or Bidder, or a resolution by negotiation, settlement or legal proceedings, of a dispute between County and Bidder involving: (1) the submission or content of the Escrow Bid Documents submitted by Bidder; (2) a request by Bidder for relief from its Bid or for relief from any other obligation of Bidder in connection with the bidding process; (3) questions or disputes over the Bidder's right to, or the terms of, a Contract Adjustment; or (4) a Claim

or other demand by County or Bidder for a legal remedy or recovery of money ("Permitted Uses"). Escrow Bid Documents shall not be used for any other purpose.

.11 Examination. Examination of the Escrow Bid Documents shall be in the presence of a representative of both County and Contractor unless a party fails, after reasonable notice from the party seeking to examine the Escrow Bid Documents, to arrange for a representative to be present, in which case the examination may take place by the requesting party alone. Copies of any portion of the Escrow Bid Documents may be made by either County or Bidder at the time of examination.

ARTICLE 5 CONSIDERATION OF BIDS

5.1 OPENING OF BIDS

All Bids shall be publicly opened and read aloud at the location for receipt of Bids on the Day of the Bid Closing Deadline. Without limitation to the County's right to reject all Bids, if two or more responsive Bids from responsible Bidders are the same and lowest, then the successful Bidder may be chosen by the County.

5.2 REJECTION OF BIDS

5.2.1 Rejection of Bid. Any Bid that is in any way incomplete or irregular is subject to rejection by County.

5.2.2 Rejection of All Bids. The County has the right to reject all Bids, with or without extending the opportunity to any Bidder to re-bid.

5.3 WAIVER OF IRREGULARITIES

The County has the right to waive informalities and irregularities in a Bid received or in the bidding process.

5.4 AWARD

5.4.1 Basis of Award. It is the intent of the County to Award the Construction Contract to the responsible Bidder submitting a Bid in accordance with the requirements of the Bidding Documents for the lowest Bid Amount.

5.4.2 Notice of Award. Within fourteen (14) Days following public opening and reading of Bids, the County will issue a Notice of Intent to Award identifying the name of the Bidder to whom the County intends to Award the Construction Contract. Such notice will be mailed to all Bidders submitting a Bid. The County may, in its sole and absolute discretion, elect to extend the time for its issuance of its Notice of Intent to Award.

5.4.3 Bid Protests. Any Bidder submitting a Bid to the County may file a protest of the County's proposed Award of the Construction Contract provided that each and all of the following are complied with:

.1 The bid protest is in writing.

.2 The bid protest is both: (1) filed with and received by the Clerk of the Board at the following address, 4080 Lemon St. 1st Floor Riverside, CA 92501, not more than five (5) Days following the date of issuance of the Notice of Intent to Award. Failure to timely file and serve the bid protest as

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aforestated shall constitute grounds for the County's denial of the bid protest without consideration of the grounds stated therein.

.3 The written bid protest sets forth, in detail, all grounds for the bid protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest. Any grounds not set forth in the bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and credible evidence. Any bid protest not conforming to the foregoing shall be rejected as invalid.

.4 Provided that a bid protest is filed in conformity with the foregoing, the Assistant CEO/EDA, or such individual(s) as may be designated by the Assistant CEO/EDA in his/her discretion, shall review and evaluate the basis of the bid protest, and shall provide a written decision to the Bidder submitting the bid protest, either concurring with or denying the bid protest. The written decision of the Assistant CEO/EDA or his/her designee shall be final, unless overturned by the Board of Supervisors.

ARTICLE 6 POST- AWARD

6.1 POST- AWARD SUBMITTALS

6.1.1 Construction Contract. The Bidder identified in the Notice of Intent to Award as the successful Bidder to receive Award by the County shall execute the Construction Contract and return it to the County within five (5) Days after issuance by County to Bidder of the Construction Contract from the County and prior to execution of the Construction Contract by County.

6.1.2 Other Post-Award Submittals. Within the time periods set forth below, the Bidder identified in the Notice of Intent to Award as the successful Bidder shall submit the following additional Post-Award Submittals, completed and signed in the manner required by the Bidding Documents, to the County at EDA-PMO, 3403 Tenth St., Fourth Floor, Riverside, CA 92501:

.1 within ten (10) Days after issuance by County to Bidder of the Notice of Intent to Award and prior to commencement of the Work, such Bidder shall submit to County the following:

- (1) Performance Bond and Payment Bond (issued by Surety);
- (2) Evidence of Insurance, in the form specified in the Bidding Documents;
- (3) Workers' Compensation Certificate, in the form specified in the Bidding Documents;
- (4) Declaration of Sufficiency of Funds (required only if the Bidder has not entered into a collective bargaining agreement covering the workers to be employed for performance of the Work), in the form specified in the Bidding Documents;

.2 within twenty-one (21) Days after issuance by County to Bidder of the Notice of Intent to Award, such Bidder shall submit to the County the following:

- (1) Construction Schedule, prepared by Bidder in the manner required by Section 3.9 of the General Conditions and in the Specifications; and
- (2) Schedule of Values, prepared by Bidder in the manner required by Section 9.3 of the General Conditions and Section 6-21 of the Specifications.

6.1.3 Failure to Submit. Failure of the successful Bidder to submit any the Post-Award Submittals specified in Paragraphs 6.1.1 and 6.1.2, above, within the time periods specified therein shall be deemed to be a failure or refusal to execute the Construction Contract and shall be cause for forfeiture of such Bidder's Bid Security.

6.2 BIDDER RESPONSIBILITY

County reserves the right to request that any Bidder submit, as a condition of Award, information demonstrating that the Bidder and/or any of the Subcontractors listed in the Designation of Subcontractors submitted by Bidder, is financially and in all other respects possessed of the attributes of trustworthiness, as well as quality, fitness, capacity and experience, to satisfactorily perform under the terms and conditions of the Bidding Documents, Contract Documents and its Bid. Bidder shall comply with such request by submitting the information requested within five (5) Days of receipt of County's request. Failure to do so may be treated by County as a grounds to reject Bidder's Bid. Failure by the County to make such a request shall not constitute a waiver of its right to determine that Bidder or any such Subcontractor is not responsible to perform the Work.

ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

7.1 BOND REQUIREMENTS

7.1.1 Performance and Payment Bonds. The successful Bidder will be required to furnish: (1) a Performance Bond in the form included in the Bidding Documents guaranteeing faithful performance of all obligations under the Construction Contract; and (2) a Payment Bond that complies with the requirements of Civil Code Section 9554 in the form included in the Bidding Documents. The penal sums of the Performance Bond and Payment Bond shall each be initially in the amount of one hundred percent (100%) of the Contract Price. The penal sum shall be increased for Contract Adjustments increasing the Contract Price that are authorized by Change Order or Unilateral Change Orders.

7.1.2 Cost of Bonds. The cost of Performance Bonds and Payment Bonds shall be deemed included in the amount of a Bidder's Bid.

7.1.3 Surety. Both the Performance Bond and Payment Bond shall be issued by an Admitted Surety. The Surety on the Performance Bond shall have an A.M. Best's Insurance Rating of A:VIII (A:8) or better.

7.2 TIME OF DELIVERY AND FORM OF BONDS

7.2.1 Submission by Bidder. Within the time period set forth in Subparagraph 6.1.2.1, above, the successful Bidder shall deliver the required Performance Bond and Payment Bond to the County fully executed and issued by the Bidder's Surety(ies).

7.2.2 Execution of Bonds. Notary acknowledgements of the signatures of the Bidder and Surety(ies) is required. The attorney-in-fact who executes the required Performance Bond or Payment Bond on behalf of a Surety shall affix thereto a certified and current copy of the power of attorney authorizing such attorney-in-fact to execute same on behalf of such Surety.

**ARTICLE 8
CONSTRUCTION CONTRACT**

8.1 EXECUTION OF CONTRACT

The successful Bidder shall execute the Construction Contract in the form included in the Bidding Documents.

8.2 BOARD APPROVAL

The Construction Contract shall not be binding upon the County until it has been awarded by the Assistant CEO/EDA or Board of Supervisors, and executed by the Board Chair, or designee.

BID FORM

TO THE GOVERNING BOARD OF THE COUNTY OF RIVERSIDE:

Date: _____

Bidder: _____

The undersigned Bidder, having carefully examined the Bidding Documents for the following Project:

Larry D. Smith Correctional Facility Slope Armor Protection.

including, without limitation, the Plans and Specifications made part thereof, and taking into consideration all matters disclosed thereby, all matters of which Bidder is charged with knowledge by the terms thereof and all matters that are reasonably ascertainable by Bidder in the exercise of its duties of inquiry or investigation created by the terms set forth in the Bidding Documents (including, without limitation, the terms of Section 3.2 of the General Conditions, proposes, agrees to furnish in strict accordance with the Contract Documents all of the following:

- labor, materials, equipment, services, transportation;
- permits, licenses and taxes,
- **Builder's Risk (Course of Construction) Insurance coverage in accordance with the terms of Subparagraph 11.1.1.5 of the General Conditions;** and
- all other work, services and other things necessary for the undersigned to perform its obligations under the Contract Documents, excepting only those that are expressly stated in the Bidding Documents to be the responsibility of County,

for the total Base Bid price of (state in figures) \$ _____ (state in words) _____ dollars
and _____ cents.

The foregoing Base Bid is submitted based upon and taking into consideration all of modifications and additions to the Bid Documents and other information set forth in each Addendum listed below, receipt and review of which is hereby acknowledged by Bidder (state below each and every Addendum number and date):

Addendum No.		Date:	
Addendum No.		Date:	
Addendum No.		Date:	
Addendum No.		Date:	
Addendum No.		Date:	
Addendum No.		Date:	
Addendum No.		Date:	

Subject to County's acceptance of such Alternate(s) in the manner set forth in the Instructions to Bidders, the foregoing Base Bid shall be adjusted as hereinafter stated for the following Alternates set forth in the Bidding Documents and/or the above-listed Addenda:

State Amount (in words and figures)	State if Amount is an "Add" or "Deduct" to Base Bid or, if Base Bid is Not Affected, Enter "No Change"
Alternate 1: Course of Construction Insurance	
Figures: \$ _____	<input type="checkbox"/> Add <input checked="" type="checkbox"/> Deduct <input type="checkbox"/> No Change
Words: _____	
Dollars _____ Cents _____	
Alternate 2: insert description here	
Figures: \$ _____	<input type="checkbox"/> Add <input type="checkbox"/> Deduct <input type="checkbox"/> No Change
Words: _____	
Dollars _____ Cents _____	
Alternate 3: insert description here	
Figures: \$ _____	<input type="checkbox"/> Add <input type="checkbox"/> Deduct <input type="checkbox"/> No Change
Words: _____	
Dollars _____ Cents _____	
Alternate 4: insert description here	
Figures: \$ _____	<input type="checkbox"/> Add <input type="checkbox"/> Deduct <input type="checkbox"/> No Change
Words: _____	
Dollars _____ Cents _____	
Alternate 5: insert description here	
Figures: \$ _____	<input type="checkbox"/> Add <input type="checkbox"/> Deduct <input type="checkbox"/> No Change
Words: _____	
Dollars _____ Cents _____	

THE UNDERSIGNED BIDDER HEREBY MAKES THE FOLLOWING REPRESENTATIONS AND COVENANTS:

1. Except as otherwise permitted by the Instructions to Bidders, this Bid shall remain open for a period of sixty (60) Days after the Bid Closing Deadline (as defined in the Bidding Documents) and during that period of time shall not, without the written consent of County, be modified, withdrawn or canceled by the Bidder.

2. Bidder adopts and incorporates into this Bid all of the representations set forth in the Instructions to Bidders and hereby warrants that all such representations are true and correct.

3. The Bid Security submitted by Bidder is given as a guarantee that if Award of the Construction Contract that is the subject of this Bid is made to Bidder that Bidder will execute the Construction Contract and furnish the Performance Bond, Payment Bonds, evidence of insurance and other documents that Bidder is required to submit under the terms of the Bidding Documents, and in the event that the Bidder fails or refuses to execute and deliver same, such Bid Security shall be charged with the all losses and damages suffered by County as a result thereof and permitted by Applicable Law, including, without limitation, the difference between the amount of the Bid and amount for which the County may legally contract with another party to perform the Project (if such latter amount be greater than the Bid), costs of publication, and all other Losses suffered by County (including, without limitation, those associated with Delay to the Project).

4. Capitalized terms used in this Bid Form shall have the meanings assigned to them in the Bidding Documents.

Individual Bidder

Name of Bidder: _____

By: _____
(signature)

Print Name: _____

Title: _____

Date: _____

Business Address: _____

Business Telephone: _____

Business Fax: _____

Business E-mail: _____

Corporation Bidder

Corporate Name
of Bidder: _____

State of Incorporation: _____

By: _____
(signature)

Print Name: _____

Title: _____

Date: _____

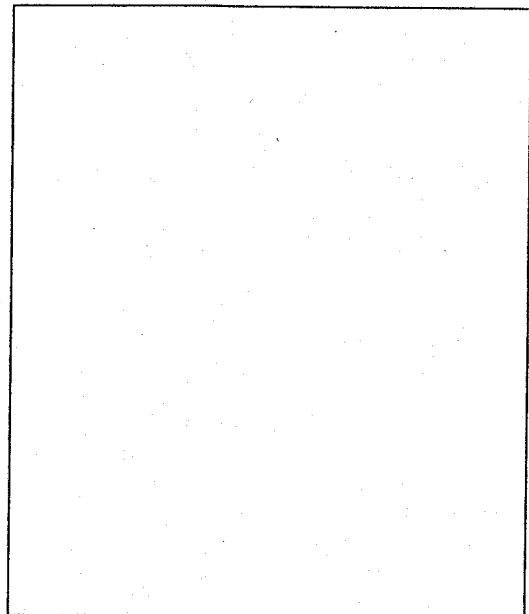
Business Address: _____

Business Telephone: _____

Business Fax: _____

Business E-mail: _____

Space for Corporate Seal and Attestation



Partnership Bidder

Name of Bidder: _____

By: _____
(signature)

Print Name: _____

Title: _____

Date: _____

Business Address:

Business Telephone: _____

Business Fax: _____

Business E-mail: _____

If additional partners are signing, attach additional sheets setting forth the above signature information for each signing partner.

If the partner or partners signing on behalf of the Bidder is/are a corporation, then for each such corporate partner complete the following (attach additional sheets, if necessary):

Corporate Name
of Partner: _____

State of Incorporation: _____

By: _____
(signature)

Print Name: _____

Title: _____

Date: _____

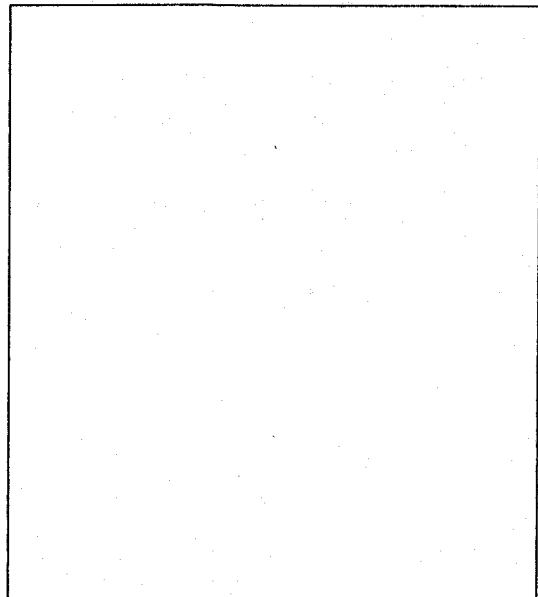
Business Address:

Business Telephone: _____

Business Fax: _____

Business E-mail: _____

Space for Corporate Seal and Attestation



Joint Venture Bidder

Name of Bidder: _____

By: _____
(signature)

Print Name: _____

Title: _____

Date: _____

Business Address:

Business Telephone: _____

Business Fax: _____

Business E-mail: _____

If additional joint venture partners are signing, attach additional sheets setting forth the above signature information for each signing joint venture partner.

If the joint venture partner or partners signing on behalf of the Bidder is/are a corporation, then for each such corporate joint venture partner complete the following (attach additional sheets, if necessary):

Corporate Name
of Partner: _____

State of Incorporation: _____

By: _____
(signature)

Print Name: _____

Title: _____

Date: _____

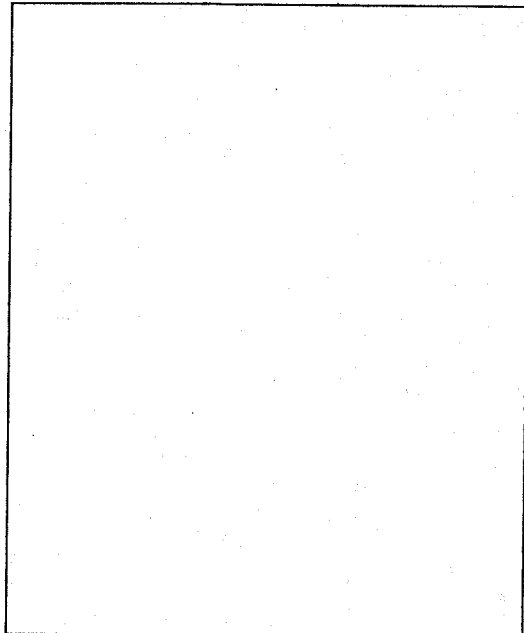
Business Address:

Business
Telephone: _____

Business Fax: _____

Business E-mail: _____

Space for Corporate Seal and Attestation



Project No. FM08720000139

Bond No. _____

BID BOND

(Public Work – Public Contract Code Section 20129 (a))

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, The undersigned _____ (“Principal”) is herewith submitting to the County of Riverside (“County”) a Bid dated _____ 20__, in the amount of (\$ _____) [Enter amount of Principal’s Bid Amount, as defined in the Instructions to Bidders] (“Bid Amount”) for the award by County to Principal of a contract (“Contract”) for the following: Larry D. Smith Correctional Facility Slope Armor Protection Project (“Project”);

AND, WHEREAS, Principal is obligated as a condition of said Bid to submit security pursuant to Public Contract Code Section 20129 (a) in the amount of ten percent (10%) of the Bid Amount, which security may be in the form of a Bid Bond issued by an admitted surety insurer pursuant to Code of Civil Procedure Section 995.120 (“Admitted Surety”);

NOW THEREFORE, the Principal and _____ (“Surety”), an Admitted Surety, are held and firmly bound unto the County in the penal sum of _____ (\$ _____) for the payment of which sum in lawful money of the United States, well and truly to be made, we, Principal and Surety, bind ourselves, our executors, administrators, successors, heirs and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if Principal is awarded the Contract upon such Bid and thereafter within the period of time specified in County’s bidding documents governing the bidding process applicable to such Bid (“Bidding Documents”) enters into the Contract with County on the terms and conditions required by the Bidding Documents and furnishes the performance and payment bonds, evidence of insurance and other documents that Principal is required to submit under the terms of the Bidding Documents, then this obligation shall be null and void; otherwise, it shall remain in full force and effect and the sum guaranteed by this bond shall, at the option of County, be forfeited to County to pay all losses and damages suffered by County as a result thereof and permitted by applicable law, including, without limitation, the difference between the Bid Amount and amount for which the County may legally contract with another party to perform the Work (if such latter amount be greater than the Bid Amount), costs of publication, and all other losses and damages suffered by County (including, without limitation, those associated with delay to the Project); provided, however, that Surety’s liability shall not exceed the penal amount of this bond.

Surety, for value received, hereby agrees that no change, extension of time, alteration or addition to the terms of the Contract or the Bidding Documents, or to the work to be performed thereunder, nor any withdrawal of the Bid in a manner not permitted by the requirements of the Bidding Documents shall in any way impair or affect Surety's obligation under this bond, and Surety does hereby waive notice of any such changes, extensions of time, alterations or additions.

In the event any legal proceeding or arbitration is brought upon this bond by County and judgment or award is entered in favor of County as the prevailing party, Surety shall pay all costs and attorney's fees incurred by the County.

IN WITNESS WHEREOF the undersigned parties have executed this instrument under their several seals this day of _____, 20__, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Affix Seal if Corporation

(Firm Name – Principal)

(Business Address)

By _____
(Original Signature)

(Title)

(Corporation Name – Surety)

Affix Corporate Seal

(Business Address)

By _____
(Original Signature)

ATTORNEY-IN-FACT

Note: Notary acknowledgment for Surety's signature and Surety's Power of Attorney must be included or attached

BID SECURITY RECEIPT

The undersigned Bidder has submitted as Bid Security for its Bid in the form of (check appropriate box):

- Bid Bond executed by an Admitted Surety, made payable to the County of Riverside,
- cash,
- cashier's check payable to the order of the County of Riverside, or
- certified check payable to the order of the County of Riverside,

in the amount of _____
dollars/_____ cents (\$_____), which amount is equal to ten percent (10%)
of the Bidder's Bid Amount, as defined in the Instructions to Bidders.

Signature

Print Name of Bidder

Print Name of Signer

DESIGNATION OF SUBCONTRACTORS

In compliance with the Subletting and Subcontracting Fair Practices Act (Chapter 4, commencing at Section 4100, Division 2, Part 1 of the Public Contract Code of the State of California) and any amendments thereto ("Act"), Bidder sets forth below the information required by the Act for those Subcontractors who are required to be listed by Bidder pursuant to the provisions of the Act [Insert information requested. Attach additional sheets, if needed.]:

<u>Portion of Work</u>	<u>Subcontractor Name</u>	<u>Location</u>

Date: _____

(Name of Bidder)

By: _____

(Signature of Bidder)

Address: _____

Phone: _____

**NON-COLLUSION DECLARATION TO BE EXECUTED BY BIDDER AND
SUBMITTED WITH BID**

(Public Contract Code Section 7106)

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder.

All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price of any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

[Signature of Declarant]

[Printed Name of Person Signing]

[Name of Bidder]

[Office or Title]

Iran Contracting Act

(Public Contract Code sections 2200-2208)

In accordance with Public Contract Code Section 2204(a), prior to bidding on, submitting a proposal or executing a contract or renewal for a County of Riverside contract for goods or services of \$1,000,000 or more, a Contractor must either:

- a) Certify it is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or
- b) Demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

To comply with this requirement, please insert your Contractor or financial institution name and Federal ID Number (if available) and complete one of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

Option #1 – Certification

I, the official named below, certify I am duly authorized to execute this certification on behalf of the Contractor/financial institution identified below, and the Contractor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Contractor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in</i>

Option #2 – Exemption

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a Contractor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services. If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Contractor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in</i>



**STANDARD FORM OF CONSTRUCTION CONTRACT BETWEEN
COUNTY AND CONTRACTOR**

by and between

CONTRACTOR'S NAME

(the "Contractor")

And

THE COUNTY OF RIVERSIDE

(the "County")

FOR:

LARRY D. SMITH CORRECTIONAL FACILITY SLOPE ARMOR PROTECTION PROJECT

**1627 SOUTH HARGRAVE STREET
BANNING, CA 92220**

STANDARD FORM OF CONSTRUCTION CONTRACT
BETWEEN COUNTY AND CONTRACTOR

THIS STANDARD FORM OF CONSTRUCTION CONTRACT BETWEEN COUNTY AND CONTRACTOR ("Agreement") is entered into on this TBD day of TBD, 2012 by and between **THE COUNTY OF RIVERSIDE**, a political subdivision of the State of California ("County") and TBD, a TBD ("Contractor") whose principal place of business is located at TBD, TBD, TBD.

ARTICLE 1
DEFINITIONS

Capitalized terms used in the Contract Documents shall have the meanings assigned to them in the General Conditions. If not defined in the General Conditions, they shall have the meanings assigned to them elsewhere in the Contract Documents. If not defined in the General Conditions or elsewhere, they shall have the meanings reasonably understood to apply to them by the context in which they are used.

ARTICLE 2
PERFORMANCE OF WORK

2.1 SCOPE OF WORK

Contractor shall execute the entire Work called for by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

2.2 STANDARD OF PERFORMANCE

In addition to and without limiting Contractor's other obligations under the Contract Documents, Contractor shall at all times in its performance of its obligations under the Contract Documents conform to the following general standards of performance:

2.1.1 the requirements of the Contract Documents;

2.1.2 the requirements and conditions of Applicable Laws;

2.1.3 the standard of care applicable to those who provide construction of the type called for by this Construction Contract for projects of a scope and complexity comparable to the Project;

2.1.4 Contractor shall furnish efficient business administration of the Work, utilizing sufficient senior level management and other qualified personnel to manage the Work; and

2.1.5 Contractor shall apply its best and highest skill and attention to completing the Work in an expeditious and economical manner, consistent with the expressed best interests of the County and within the limitations of the Contract Price and Contract Time.

ARTICLE 3
CONTRACT TIME

3.1 CONTRACT TIME

3.1.1 Substantial Completion. Subject to Contract Adjustments permitted by the Contract Documents, Contractor shall achieve Substantial Completion of the entire Work not later than Ninety (90) Days after the Date of Commencement.

3.1.2 Final Completion. Subject to Contract Adjustments permitted by the Contract Documents, Contractor shall achieve Final Completion of the Work not later than Thirty (30) Days after the actual occurrence of Substantial Completion.

3.1.3 Contract Adjustments. The Contract Time shall be extended or shortened only in accordance with the provisions of the Contract Documents governing Contract Adjustments to the Contract Time.

3.2 LIQUIDATED DAMAGES TO COUNTY

3.2.1 County's Right. County and Contractor acknowledge that if Contractor fails to Substantially Complete the Work within the Contract Time for Substantial Completion, County will suffer substantial Losses, which would be both extremely difficult and impracticable to ascertain. On that basis they agree, as a reasonable estimate of those Losses and not a penalty, to the assessment and recovery by County of liquidated damages under this Section 3.2.

3.2.2 Per Diem Rate. If Contractor fails to actually achieve Substantial Completion of the entire Work within the Contract Time for Substantial Completion, Contractor shall pay to County as liquidated damages the amount of One Thousand Dollars (\$1,000.00) per Day for each Day occurring after the expiration of the Contract Time for Substantial Completion until Contractor achieves Substantial Completion of the entire Work.

3.2.3 Adjustment for Extensions of Time. Subject to the provisions of Paragraph 8.2.8 of the General Conditions dealing with concurrency of Delays, liquidated damages shall not be charged to Contractor for a period of time for which the Contractor is entitled under the Contract Documents to a Contract Adjustment to the Contract Time for Substantial Completion.

3.2.4 Partial Completion. The liquidated damages provided for under this Section 3.2 shall not be reduced or apportioned: (1) for Substantial Completion of portions of the Work prior to Substantial Completion of the entirety of the Work; or (2) if portions of the Work are deleted pursuant to (a) the County's right to order Deleted Work; or (b) a termination by County of a portion of the Construction Contract or a deletion of portion of Work for the convenience of the County or due to an Event of Contractor Default.

3.2.5 Remedies. County may deduct any liquidated damages payable under this Section 3.2 from money due or to become due to Contractor under the Contract Documents, or pursue any other legal remedy to collect such liquidated damages from Contractor and/or its Surety.

3.2.6 Not a Limitation. County's rights under this Section 3.2 shall not be interpreted as precluding or limiting: (1) any right or remedy of County arising from an Event of Contractor Default other than a failure to achieve Substantial Completion of the Work within the Contract Time for Substantial Completion; or (2) County's right to order an acceleration, at Contractor's Own Expense, of performance of the Work to overcome Delay, including, without limitation, a Delay for which County has the right to assess liquidated damages under this Section 3.2.

3.3 LIQUIDATED DAMAGES TO CONTRACTOR

3.2.7 Contractor's Right. County and Contractor acknowledge and agree that if Contractor is unable due to Compensable Delay to actually achieve Substantial Completion of the Work within the Contract Time for Substantial Completion, Contractor and its affected Subcontractors will suffer Losses that would be both extremely difficult and impracticable to ascertain. On that basis they agree, as a reasonable estimate of those Losses and not a penalty, to the payment by County to Contractor of liquidated damages under this Section 3.3.

3.2.8 Daily Rate. Subject to the provisions of Paragraph 8.2.8 of the General Conditions dealing with concurrency of Delays, the Contract Price shall be increased by Change Order or Unilateral Change Order in the amount of One Thousand Dollars (\$1,000.00) per Day as liquidated damages for each Day for which Contractor is entitled under the Contract Documents to a Contract Adjustment extending the Contract Time for Substantial Completion due to Compensable Delay, with no additional amount added thereto or calculated thereon for Allowable Markup or any other Markup for overhead or profit to Contractor or any Subcontractor, of any Tier.

3.2.9 Payment by County. A Change Order or Unilateral Change Order setting forth a Contract Adjustment to the Contract Price for liquidated damages permitted by this Section 3.3 shall be executed following, and not before, actual Substantial Completion and prior to or contemporaneously with Final Completion. Notwithstanding any other provision of the Contract Documents to the contrary and without limitation to the County's rights of withholding payment to Contractor as permitted elsewhere in the Contract Documents or under Applicable Laws, any amounts due to the Contractor under this Section 3.3 shall be payable as part of, and not prior to the due date for payment of, Final Payment to Contractor.

3.2.10 Deleted Work. A Contract Adjustment shall be made pursuant to Subparagraph 8.2.6.2 of the General Conditions reducing the Contract Price and Contract Time in the event that the Contract Time is shortened due to (1) Deleted Work; or (2) a termination by County of a portion of the Construction Contract for convenience or due to an Event of Contractor Default.

3.2.11 Termination. County shall have no liability to Contractor to pay any liquidated damages under this Section 3.3, nor shall County have any other liability to Contractor or any Subcontractor for any Loss due to Delay (including, without limitation, Compensable Delay) in the event the Construction Contract is wholly terminated (whether such termination is a termination for cause by County or Contractor or a termination for convenience by County) at any time prior to expiration of the Contract Time for Substantial Completion set forth in Paragraph 3.1.1, above.

3.2.12 Exclusive Remedy. Liquidated damages payable by County under this Section 3.3 constitute the Contractor's sole and exclusive right and remedy for recovery from County of Losses to Contractor and its Subcontractors, of every Tier, that are attributable to Compensable Delay, regardless of the cause, duration or timing of the Compensable Delay and no other Contract Adjustment, or other form of compensation or reimbursement, of any kind, shall be made to Contractor or any Subcontractor, of any Tier, for any Loss resulting, directly or indirectly, from, or attributable to, any of the following: (1) Unexcused Delay or acceleration to overcome Unexcused Delay; (2) Excusable Delay or any acceleration not authorized by County in writing to overcome Excusable Delay; or (3) concurrency of a Compensable Delay with any different type or class of Unexcused Delay or Excusable Delay, whether such concurrency is a concurrency in cause or in effect.

3.2.13 WAIVER BY CONTRACTOR.

CONTRACTOR WAIVES THE RIGHT TO FURTHER RECOURSE OR RECOVERY OF COSTS OR DAMAGES BY REASON OF OR RELATED TO ANY DELAY (INCLUDING, WITHOUT LIMITATION, COMPENSABLE DELAY) THAT IS IN EXCESS OF OR NOT RECOVERED BY CONTRACTOR AS PART OF THE LIQUIDATED DAMAGES PAYABLE TO CONTRACTOR UNDER THIS SECTION 3.3.

ARTICLE 4 CONTRACTOR COMPENSATION

4.1 CONTRACT PRICE

4.1.1 Contract Price. County shall pay the Contractor in current funds for the Contractor's performance of the Work in accordance with the Contract Documents the Contract Price, exclusive of Contract Adjustments, of TBD Dollars (\$xx).

4.1.2 Basis. The Contract Price set forth in Paragraph 4.1.1, above, is based on the Bid submitted by Contractor as adjusted for Alternates accepted by County as set forth in Section 4.2, below.

4.1.3 Adjustments. The Contract Price is only subject to adjustment as permitted by the General Conditions for Contract Adjustments due to Compensable Changes, Deleted Work or Compensable Delay.

4.1.4 All-Inclusive Price. The Contract Price as adjusted for Contract Adjustment permitted by the Contract Documents is the total amount payable by County to Contractor for performance of the Work under the Contract Documents and is deemed to cover all Losses, foreseeable or unforeseeable, arising out of or related to past, present or future circumstances within or outside the control of the Contractor or its Subcontractors affecting the time or cost of performing the Work, including, without limitation, the effects of natural elements upon the Work, unforeseen difficulties or

obstructions affecting the performance of the Work (including, without limitation, unforeseen conditions at the Site that do not constitute Differing Site Conditions) and unforeseen fluctuations in market conditions and price escalations (whether occurring locally, nationally or internationally).

4.2 ALTERNATES

The Contract Price includes the following Alternates, which are described in the Contract Documents and are hereby accepted by County:

Number	Description	Dollar Amount

4.3 UNIT PRICES

Unit prices agreed to by County and Contractor are as follows:

Description	Measurement Unit	Dollar Amount

**ARTICLE 5
ENUMERATION OF CONTRACT DOCUMENTS**

5.1 LIST OF CONTRACT DOCUMENTS

The Contract Documents include, without limitation, the following:

5.1.1 Construction Contract. The Contract Documents include this executed Standard Form of Construction Contract Between County and Contractor.

5.1.2 General Conditions. The Contract Documents include the General Conditions of the Standard Form of Construction Contract Between County and Contractor (Long Form) or General Conditions of the Standard Form of Construction Contract Between County and Contractor (Short Form).

5.1.3 Specifications. The Contract Documents include the following Specifications:

Title	Date	Divisions

5.1.4 Drawings. The Contract Documents include the following Drawings dated April, 2012, unless a different date is shown below:

Sheet Number	Title	Date	Pages

--	--	--	--

5.1.5 Addenda. The Contract Documents include the following Addenda:

Addendum Number	Title	Date	Pages

5.1.6 Reference Documents. The Contract Documents include the following Reference Documents:

Title	Author	Date	Pages

5.1.7 List other contract documents, if any

**ARTICLE 6
SPECIAL REQUIREMENTS**

6.1 LABOR CODE SECTION 1861 CERTIFICATION

By signing below, Contractor certifies that he/she/it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the California Labor Code, and that he/she/it will comply with such provisions before commencing the performance of the Work.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA, 95826.

IN WITNESS WHEREOF, the parties hereto have made and executed four (4) originals of this Construction Contract, on _____ [to be filled in by Clerk of the Board].

[SIGNATURES ON FOLLOWING PAGE]

"COUNTY"

COUNTY OF RIVERSIDE

By: _____

Title: Chairperson, Board of Supervisors

RECOMMENDED FOR APPROVAL

Deputy Director

Economic Development Agency

Address:
Economic Development Agency
Riverside Centre
3403 Tenth Street, 4th Floor
Riverside, CA 92501

ATTEST:

Kecia Harper-Ihem
Clerk of the Board

By: _____

Deputy

(SEAL)

"CONTRACTOR"

(sign on line above)

By: _____

(type name)

Title: _____

The following information must be provided concerning the Contractor:

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

If "other", enter legal form of business:

Enter address:

Telephone: _____

Facsimile: _____

Email: _____

Employer State _____

Tax ID #: _____

State Contractor License #: _____

If Contractor is not an individual or corporation, list names of 4 representatives who have authority to contractually bind Contractor:

If Contractor is a corporation, state:

Name of President: _____

Name of Secretary: _____

State of Incorporation: _____

Project No. FM08720000139

Bond No. _____

PAYMENT BOND

(Public Work - Civil Code Sections 9550 et seq.)

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the County of Riverside ("County") by action of the Board of Supervisors on _____, 20____, has awarded Construction Contract Number _____ ("Contract") to the undersigned _____ as Principal ("Principal") to perform the work ("Work") for the following project Larry D. Smith Correctional Facility Slope Armor Protection;

AND, WHEREAS, said Principal is required by the Contract and/or by Division 3, Part IV, Title XV, Chapter 7 (commencing at Section 9550) of the California Civil Code to furnish a payment bond in connection with the Contract;

NOW THEREFORE, we, the Principal and _____ ("Surety"), an admitted surety insurer pursuant to Code of Civil Procedure, Section 995.120, are held and firmly bound unto County in the penal sum of _____ Dollars (\$ _____), this amount being not less than one hundred percent (100%) of the total sum payable by County under the Contract at the time the Contract is awarded by County to the Principal, lawful money of the United States of America, for the payment of which sum well and truly to be made, we, Principal and Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Principal, its heirs, executors, administrators, successors, or assigns approved by County, or its subcontractors, of any contracting tier, shall fail to pay any person or persons named in California Civil Code, Section 9554, then Surety will pay for the same, in or to an amount not exceeding the penal amount hereinabove set forth, and also will pay to the prevailing party if suit is brought upon this bond, reasonable attorney's fees as provided in California Civil Code, Section 9564.

Surety, for value received, agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the Work to be performed thereunder, nor any rescission or attempted rescission of the Contract or this bond, nor any conditions precedent or subsequent in the bond or Contract attempting to limit the right of recovery of any claimant otherwise entitled to recover under the Contract or this bond shall in any way impair or affect Surety's obligation under this bond, and Surety does hereby waive notice of any such changes, extensions of time, alterations or additions.

Surety is not released from liability to those for whose benefit this bond has been given, by reason of any breach of the Contract by County or Principal.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, joint and severally, or against any one or more of them or against less than all of them, without impairing County's rights against the others.

Affix Seal if Corporation

(Firm Name – Principal)

(Business Address)

By _____
(Original Signature)

(Title)

(Corporation Name – Surety)

Affix Corporate Seal

(Business Address)

By _____
(Signature – Attached Notary's Acknowledgment)

ATTORNEY-IN-FACT
(Title-Attach Power of Attorney)

Note: Notary acknowledgment of signatures of Bidder and Surety, and Surety's Power of Attorney, must be included or attached

Project No. FM08720000139

Bond No. _____

PERFORMANCE BOND

(Public Work – Public Contract Code Section 20129 (b))

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the County of Riverside ("County") by action of the Board of Supervisors on _____, 20__, has awarded Construction Contract Number _____ ("Contract") to the undersigned _____ as Principal ("Principal") to perform the work ("Work") for the following project: Larry D. Smith Correctional Facility Slope Armor Protection, which Contract is by this reference hereby incorporated herein and made a part hereof;

AND, WHEREAS, said Principal is required by the Contract and/or by California Public Contract Code, Section 20129 (b) to furnish a performance bond for the faithful performance of the Contract;

NOW THEREFORE, we, the Principal and _____ ("Surety"), an admitted surety insurer pursuant to Code of Civil Procedure, Section 995.120, are held and firmly bound unto County in the penal sum of _____ Dollars (\$ _____), this amount being not less than one hundred percent (100%) of the total sum payable by County under the Contract at the time the Contract is awarded by County to the Principal, lawful money of the United States of America, for the payment of which sum well and truly to be made, we, Principal and Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Principal, its heirs, executors, administrators, successors or assigns approved by County, shall in all things stand to and abide by and well and truly keep and perform all the undertakings, terms, covenants, conditions and agreements in the Contract, including, without limitation, all obligations during the original term and any extensions thereof as may be granted by County, with or without notice to Surety thereof (including, without limitation, the obligation for Principal to pay liquidated damages), all obligations during the period of any warranties and guarantees required under the Contract and all other obligations otherwise arising under the terms of the Contract (such as, but not limited to, obligations of indemnification), all within the time and in the manner therein designated in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Whenever Principal shall be, and is declared by County to be, in default under the Contract, the Surety shall promptly either remedy the default, or, if the Contract is terminated by County or the Principal's performance of the Work is discontinued, Surety shall promptly complete the Contract through its agents or independent contractors, subject to acceptance of such agents or independent contractors

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FM08720000139 - Larry D. Smith Correctional
Family Slope Armor Protection Project

7-2-12(1)

by County as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract (including, without limitation, all obligations with respect to payment of liquidated damages) less the "Balance of the Contract Price" (as hereinafter defined); subject to the penal amount of this bond as set forth above. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable to Principal by County under the Contract and any modifications thereto, less the amount previously paid by County to the Principal and less amounts that County is authorized to withhold under the terms of the Contract.

If County determines that completion of the Contract by Surety or its agents or independent contractors must be performed by a lowest responsible bidder selected pursuant to a competitive bidding process, then Surety shall comply with such processes in accordance with the requirements of County and applicable laws. Unless otherwise approved by District, in the exercise of its sole and absolute discretion, Surety shall not utilize Principal in completing performance of the Work.

No right of action shall accrue on this bond to or for the use of any person or entity other than County or its successors or assigns.

In the event any legal proceeding or arbitration is brought upon this bond by County and judgment or award is entered in favor of County as the prevailing party, Surety shall pay all costs and attorney's fees incurred by the County.

Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

Surety, for value received, agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, shall in any way impair or affect Surety's obligation under this bond, and Surety does hereby waive notice of any such changes, extensions of time, alterations or additions.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, joint and severally, or against any one or more of them or against less than all of them, without impairing County's rights against the others.

Affix Seal if Corporation

(Firm Name – Principal)

(Business Address)

By _____
(Original Signature)

(Title)

(Corporation Name – Surety)

Affix Corporate Seal

(Business Address)

By _____
(Signature – Attached Notary's Acknowledgment)

ATTORNEY-IN-FACT
(Title-Attach Power of Attorney)

Note: Notary acknowledgment of signatures of Bidder and Surety, and Surety's Power of Attorney, must be included or attached

CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

Labor Code Section 3700 states:

"Every employer except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employee.

(c) For any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers' compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state which, on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702.

For purposes of this section, 'state' shall include the superior courts of California."

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

(Name of Contractor)

By:

(Name of Signer)

(Signature)

(In accordance with Article 5 (commencing at Section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.)

DECLARATION OF SUFFICIENCY OF FUNDS

(California Labor Code Section 2810)

I, the undersigned, an authorized representative of _____ ("Bidder") with authority to make the statements contained in this Declaration on behalf of Bidder, hereby declare the following:

1. The Bidder's employer identification number for state tax purposes is _____.
2. The Bidder's workers' compensation insurance policy number is _____ and the name, address, and telephone number of the insurance carrier providing said insurance is:

_____.

3. The following information is provided concerning any and all vehicles that are owned by the Bidder and that will be used for transportation in connection with any service provided for the performance of the Work that is the subject of the Bidder's Bid [Insert information requested. Attach additional sheets, if needed.]:

<i>Vehicle</i>	<i>Vehicle ID #</i>	<i>Vehicle Liability Insurance Policy Number (of policy covering vehicle)</i>	<i>Name, Address and Telephone Number of Vehicle Liability Insurance Carrier (issuing policy covering vehicle)</i>

4. The following is the address of any real property that will be used to house workers in connection with the performance of the Work that is the subject of the Bidder's Bid [If no such housing will be provided, enter "none"]: _____

5. The actual or estimated number of workers that will be employed to perform the Work that is the subject of the Bidder's Bid, the total amount of wages to be paid to said workers, and the dates on which said wages will be paid are as follows [Attach additional sheets, if needed.]:

<i>Total Number of Workers</i>	<i>Total Amount of Wages</i>	<i>Date(s) for Payment of Wages</i>

6. Check only one of the following boxes, as applicable:

The statement of number of workers declared in Paragraph 5, above, is a statement of the actual number of workers that will be employed.

The actual number of workers requested in Paragraph 5, above, is unknown and therefore the statement of number of workers declared therein is based on the Bidder's best estimate available at the time of submitting its Bid, rather than the actual number of workers that will be employed and if and when the actual number of workers and the other information requested above is available, it will be reported to the County of Riverside by Bidder in writing.

7. The actual or estimated total number of persons who will be utilized as independent contractors to perform the Work of the Project that is the subject of the Bidder's Bid (together with their known, current local, state, and federal contractor license identification numbers that each is required to have under local, state or federal laws or regulations) are as follows [Attach additional sheets, if needed.]:

<i>List of Independent Contractors</i>	<i>Current, local, state and federal contractor license identification number</i>

8. Check only one of the following boxes, as applicable:

The statement of number of independent contractors declared in Paragraph 7, above, is a statement of the actual number of independent contractors that will be utilized.

The actual number of independent contractors requested in Paragraph 7, above, is unknown and therefore the statement of number of independent contractors declared therein is based on the Bidder's best estimate available at the time of submitting its Bid, rather than the actual number of independent contractors that will be utilized, and if and when the actual number of independent contractors and the other information requested above is available, it will be reported to the County of Riverside by Bidder in writing.

I, the undersigned, declare under penalty of perjury that the foregoing statements are within my personal knowledge and are true and correct. Executed on this _____ day of _____, in the year 20__ at _____, California.

(signature)

Type Name of Signer:

Type Name of Bidder:

SUBSTITUTION REQUEST FORM

ONLY ONE (1) REQUEST FOR SUBSTITUTION FOR EACH PRODUCT WILL BE CONSIDERED.
USE A SEPARATE SUBSTITUTION REQUEST FORM FOR EACH PROPOSED SUBSTITUTION.

TO: COUNTY OF RIVERSIDE
 PROJECT: Larry D. Smith Correctional Facility Slope Armor Protection Project
 PROJECT NO.: FM08720000139

Bidder requests Substitution of the following material, product, thing or service:

Specification Section	Article No.
Specified Item	Address
Manufacturer's Name	Model or Catalog Number
Trade Name of Product	Specified Fabricators and Suppliers

For each proposed Substitution, list below where in the Specifications the item to be replaced is currently specified, the item specified in the Specifications and that is proposed to be replaced by the Substitution and a brief description of the proposed Substitution:

Specification Reference	Specified Item	Proposed Substitution

Respond to each of the following questions, attaching additional sheets if required:

In the case of a manufactured material, product or thing, does the manufacturer certify that the proposed Substitution is appropriate for use as an "equal" to the material, product, or thing specified?

Yes No

If so, attach such certification.

Are maintenance services available? Yes No

If so, describe scope and terms, including any limitations on maintenance services: _____

Are replacements materials, products or things, and all parts thereof, available? Yes No

Contractor agrees to provide specified item in the event this Substitution Request is denied? Yes No

Does the Substitution affect dimensions shown On Drawings? Yes No

If so, clearly describe changes: _____

Will you pay for changes to the building design, including architectural, engineering and detailing costs caused by the acceptance of the requested Substitution? Yes No

Would the Substitution, if used, affect any other trades? Yes No

If so, describe each affect: _____

Would the Substitution, if used, affect your ability to meet The time periods for construction required by the Bidding Documents? Yes No

If so, describe each affect: _____

Are there any differences between Substitution and specified item? Yes No

If so, describe each difference: _____

Are the manufacturer's guarantees and warranties of the Substitution and the specified item the same? Yes No

If so, describe each difference or attach copy of all written guarantees and warranties provided for the Substitution : _____

Attach complete product data, including but not limited to laboratory tests, approval numbers, research report numbers, listings, and approved assembly descriptions as specified the Specifications or as required by Governmental Authorities under Applicable Laws.

Contractor

County

By

Reviewed by:

Date

Date

Remarks

Design Consultant

Reviewed by:

SPACE RESERVED FOR COUNTY USE ONLY:

Decision on Substitution Request:

Grant

Deny

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 Affidavit; 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 Affidavit.** "Non-Collusion Affidavit" 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.

1.3.2 **Assignment of Rights.** Contractor shall, without further consideration, obtain any and all Intellectual Property Rights in the Project Documents and Design Documents prepared by Contractor or any Subcontractor, of any Tier, for use in connection with the Project, 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, transfer such rights, if necessary in writing, to County and cooperate with County in securing and registering such rights, such that County shall own all Intellectual Property Rights and any other tangible and/or intangible property rights associated therewith. Such transfer and assignment will be effective for the entire duration of the copyrights and include, but are not be limited to, all rights in related plans, specifications, documentation, derivative works and moral rights.

1.3.3 **Contractor's Warranty.** Contractor represents and warrants that the Project Documents and Design Documents prepared by Contractor or any Subcontractor for use on the Project, 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.

1.3.4 **Non-Exclusive License.** Without derogation of County's rights under this Section 1.3, Contractor and Subcontractors, of every Tier, are granted a limited, non-exclusive license, revocable at will of County, to use and reproduce applicable portions of the Design Documents, Contract Documents and Project Documents as appropriate to and for use in the execution of the Work and for no other purpose.

1.3.5 **Reproduction.** Contractor shall do all reproduction and distribution of such reproducible prints of Contract Documents and Design Documents as are necessary for the complete pricing and performance of the Work, including, without limitation, all Changes. The costs of such reproduction shall be at Contractor's Own Expense.

1.3.6 **Delivery to County.** All Design Documents and Contract Documents (including originals and copies), and one (1) copy of all other Project Documents, in the possession of Contractor or Subcontractors shall be delivered to County upon the earlier of Final Completion of the Work or termination of the Construction Contract; provided, however, that Contractor shall have the right to retain one (1) copy of the Contract Documents and Submittals as a permanent record.

1.3.7 **Subcontractors.** Contractor shall take all necessary steps to ensure that a provision is included in all contracts with Subcontractors, of every Tier, who perform Work on the Project protecting and preserving County's rights as set forth in this Section 1.3.

ARTICLE 2 COUNTY RIGHTS AND OBLIGATIONS

2.1 INFORMATION, APPROVALS AND SERVICES REQUIRED OF COUNTY

2.1.1 **Legal Descriptions.** County shall furnish, within a reasonable time after written request by Contractor, a legal description of the Site and information describing legal limitations affecting the Site that are recorded with applicable Governmental Authorities, such as, but not limited to, easements.

2.1.2 **Permits and Fees.** County shall secure and pay for only those permits and fees which are expressly stated to be the responsibility of County under the Contract Documents. County shall pay for all hook-up fees (not including "tap fees", which are the responsibility of Contractor pursuant to Paragraph 3.14.3, below) in order to establish a new account with a utility provider.

2.1.3 **County Approvals.** Information, approvals and decisions required of County or a County Consultant for which a County Review Period or County Review Date is included in the Construction Schedule that is approved by County shall be provided in accordance with the Construction Schedule. If a County Review Period or County Review Date is not set forth in the Construction Schedule approved by County, then such information, approvals and decisions shall be provided upon written request by Contractor without unreasonable Delay. Notwithstanding the foregoing, failure by County, Architect or a County Consultant to provide any information, approvals or decisions shall not be considered as a basis for Contract Adjustment to the Contract Time unless and until, and in calculating a Contract Adjustment any Delay or extension of the Contract Time resulting from a late-issuance of such information, approval or decision shall not commence until after:

.1 in the case of information, approval or decision for which there is a County-approved County Review Period or County Review Date in the County-approved Construction Schedule, seven (7) Days have passed since the County and the individual from whom such information, approval or decision is sought have received from Contractor a written notice containing all the following:

(1) a detailed description of the information, approval or decision required;

(2) a statement that the County Review Period or County Review Date has expired or passed; and

(3) a statement, prominently displayed, that: "PURSUANT TO PARAGRAPH 2.1.3 OF THE GENERAL CONDITIONS, THE FAILURE TO PROVIDE THE REQUESTED INFORMATION, APPROVAL OR DECISION WITHIN 7 CALENDAR DAYS FROM THIS NOTICE MAY RESULT IN A REQUEST FOR A CONTRACT ADJUSTMENT"; or

.2 in the case of information, approval or decision for which there is no County Review Period or County Review Date set forth in the County-approved Construction Schedule, thirty (30) Days have passed since the County and the individual from whom such information, approval or decision is sought have received from Contractor a written notice that includes the statements set forth Clauses (1) and (2) of Subparagraph 2.1.3.1, above, and that includes a statement, prominently displayed, that: "PURSUANT TO PARAGRAPH 2.1.3 OF THE GENERAL CONDITIONS, THE FAILURE TO PROVIDE THE REQUESTED INFORMATION, APPROVAL OR DECISION WITHIN 30 CALENDAR DAYS FROM THIS NOTICE MAY RESULT IN A REQUEST FOR A CONTRACT ADJUSTMENT".

2.1.4 Approvals. Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of County, Architect or any other Project Team member, or by tests, inspections or approvals required or performed by persons other than the Contractor.

2.1.5 Non-Specified Items. County reserves the right to approve materials and sources of supply of materials that are not specified in the Contract Documents and that are used for the performance of the Work.

2.2 COUNTY'S RIGHT TO STOP THE WORK

If Contractor fails to correct Defective Work as required by Section 13.2 of these General Conditions, fails to perform the Work in accordance with the Contract Documents or violates any Applicable Law, County may immediately order Contractor to stop the Work, or any portion thereof, until the cause for such direction has been eliminated by Contractor. Contractor shall immediately comply with such notice at Contractor's Own Expense. Nothing stated herein or elsewhere in the Contract Documents shall be interpreted as placing upon County a duty or responsibility to Contractor or any other party to exercise its right to stop the Work.

2.3 COUNTY'S RIGHT TO CARRY OUT THE WORK

If Contractor fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools and services to maintain the Construction Schedule, or otherwise fails to comply with any requirement of the Contract Documents, and fails to cure such failure in the manner required by Subparagraph 15.1.1.4, below, County may correct such failure. In such case, County shall be entitled to recover from Contractor or deduct from payments then or thereafter due Contractor for any Loss resulting from such failure, including compensation for the additional services and expenses of County, County Consultants and others whose services are reasonably required and made necessary thereby. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall promptly pay the amount of the shortfall to County.

2.4 ACCOUNTING, RECORDS AND AUDIT

2.4.1 Accounting System. Contractor shall exercise such controls as may be necessary for proper financial management of the Work. Such accounting and control systems shall comply with prevailing custom and practice for similar projects, be satisfactory to County and shall include preservation of the books and records

described in Paragraph 2.4.2, below, subject to Contractor's obligations under Paragraph 1.3.6, above, for a period of ten (10) years after Final Completion of the Work, or for such longer period as may be required by Applicable Laws.

2.4.2 Books and Records. Contractor shall keep, and shall require provisions to be included in all contracts entered into by Subcontractors, of every Tier, requiring the Subcontractors, of every Tier, to keep, full and detailed books, records, information, materials and data, of every kind and character (hard copy, as well as computer readable data if it exists) that have any bearing on or pertain to any matters, rights, duties or obligations relating to the Project, Work or Construction Contract, including, without limitation, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, change orders, change order requests, estimates, field orders, construction change directives, schedules, requests for information, diaries, logs, reports, shop drawings, samples, exemplars, drawings, specifications, invoices, delivery tickets, receipts, vouchers, cancelled checks, memoranda, accounting records; job cost reports, job cost files (including complete documentation of negotiated settlements), backcharges, general ledgers; documentation of cash and trade discounts earned, insurance rebates and dividends, and other documents relating in any way to any claims, charges or time extensions asserted by Contractor or any of the Subcontractors, of any Tier, or relating to any credits, rebates or discounts owing to County.

2.4.3 Inspection and Copying. Contractor shall allow, and shall require provisions to be included in all contracts entered into by Subcontractors, of every Tier, allowing, County and the auditor for the State of California (and the authorized representative(s), auditors, attorneys and accountants of each) upon twenty-four (24) hours notice to Contractor, full access to inspect and copy all its aforesaid books and records at a location within the Southern California area. Such right of audit may be exercised by either County or the auditor for the State of California as often as reasonably necessary to verify Contractor's continuing compliance with the Contract Documents.

2.4.4 Confidential Information. Nothing stated in this Section 2.4 or elsewhere in the Contract Documents shall be interpreted as a waiver by Contractor or any Subcontractor of any rights of privilege or confidentiality that are provided for by Applicable Law nor as authorizing the inspection of books and records that contain information concerning estimating means or methods that is not, in whole or part, relevant to a charge or demand being asserted by Contractor or a Subcontractor involving Extra Work, Deleted Work, Delay or a Claim.

2.4.5 Withholding of Payment. In addition to and without limitation upon County's other rights and remedies for breach, including any rights of County to withhold payment that are set forth elsewhere in the Contract Documents, County shall have the right, exercised in its sole discretion, to withhold from any payment due to Contractor under an Application for Payment a sum of up to ten percent (10%) of the total amount set forth in such Application for Payment until Contractor and the Subcontractors have complied with any outstanding and unsatisfied obligation under this Section 2.4. Upon compliance with this Section 2.4, any such monies withheld shall be released to Contractor.

2.4.6 Specific Performance. Contractor agrees that any failure to provide access to books and records as required by this Section 2.4 will result in irreparable harm and prejudice to County and shall, without the necessity of posting of any bond or undertaking, be specifically enforceable by means of a mandatory injunctive order (temporary, preliminary, provisional or otherwise) issued by a court of competent jurisdiction, which order the County and Contractor hereby consent to being issued based upon affidavits and without the necessity of oral testimony.

2.5 COUNTY FURNISHED MATERIALS

2.5.1 Supply by County. County shall have the right to furnish materials, products or equipment directly for processing and incorporation by Contractor in lieu of Contractor providing materials, products or equipment specified in the Contract Documents to be provided by Contractor as part of the Work.

2.5.2 Deleted Work. If the materials, products or equipment provided by County pursuant to Paragraph 2.5.1, above, then a Change Order shall be executed deleting such materials, products or equipment from the Work along with a Contract Adjustment reducing the Contract Price in the manner provided for in Article 7, below, applicable to Contract Adjustments for Deleted Work.

2.5.3 Delivery Deadlines. Without limitation to Contractor's obligations under Article 8, below, upon receipt of written instruction by County of its intent to provide materials, products or equipment pursuant to this

Section 2.6, Contractor shall notify County promptly in writing of any deadlines within which such materials, products or equipment must be received at the Site in order to avoid Delay.

2.5.4 **Delivery to Site.** Contractor shall, upon their delivery to the Site, properly receive and unload materials, products or equipment furnished by County pursuant to this Section 2.5.

2.5.5 **Care, Custody and Control.** Contractor assumes full and unconditional responsibility for care, custody and control of the materials, products or equipment that are furnished by County pursuant to this Section 2.5, whether or not they have been accepted by County, and assumes sole responsibility for any subsequent loss, injury or damage thereto occurring prior to Final Completion.

2.5.6 **Notice of Deficiencies.** Contractor shall carefully inspect any materials, products or equipment furnished by County pursuant to this Section 2.5 and immediately notify County of any defect or deficiency in such materials, products or equipment or any nonconformity in such materials, products or equipment with the requirements of the Contract Documents or with the requirements of the other documentation provided to Contractor setting forth the conditions of County's purchase. Contractor shall not accept any materials, products or equipment furnished by County with respect to which Contractor has provided such notice of defect, deficiency or non-conformity unless and until instructed to do so in writing by County.

2.5.7 **Incorporation in Work.** Contractor shall, as part of the Work and without Contract Adjustment, provide any and all processing, fabrication, cutting, shaping, fitting, assembly and installation of materials, products or equipment furnished by County pursuant to this Section 2.5 in full compliance with the requirements of the Contract Documents and the manufacturer's instructions and recommendations.

2.6 COUNTY INSTALLED ITEMS

Contractor shall notify County, a reasonable time in advance, of the Contractor's scheduled dates for installation of items that are specified in the Contract Documents to be placed on, attached to or incorporated into the Work by County or Separate Contractors. In the event that Contractor fails to do so or if due to Unexcused Delay the County is unable after such notice by Contractor to so place, affix or incorporate such items, then Contractor shall be responsible, in addition to any amounts due to County for liquidated damages, to reimburse County for costs of storage or rental of temporary replacement items until such time as the Work is in a condition suitable for such items to be placed, affixed or incorporated.

2.7 COUNTY'S ADDITIONAL RIGHTS

The rights stated in this Article 2 are in addition to and not in limitation of any other rights of County granted elsewhere in the Contract Documents or under Applicable Laws.

ARTICLE 3 CONTRACTOR PERFORMANCE

3.1 CONTRACTOR STATUS

3.1.1 **Independent Contractor.** Contractor is, and shall at all times be deemed to be, an independent contractor and is wholly responsible for the performance of the obligations required of it by the terms of the Contract Documents.

3.1.2 **Agents, Employees.** Contractor wholly assumes responsibility for the acts and omissions of its agents and employees and the agents and employees of each Subcontractor, of every Tier, as they relate to the Work. Contractor, its agents and employees, shall not be entitled to any rights or privileges of County's employees and nothing contained in the Contract Documents and no course of conduct shall be construed as creating the relationship of employer and employee, or principal and agent, between County and any agent or employee of Contractor or any Subcontractor. County shall have the right, but not the obligation, to monitor the employment and other activities of Contractor and the Subcontractors to determine compliance with the terms of the Contract Documents.

3.1.3 **Licenses.** Contractor and the Subcontractors, of every Tier, shall maintain, such contracting, professional and business licenses as may be required by Applicable Laws for the duration of time that Contractor is performing the Work under the Contract Documents, including the period of any warranty provided covering all or any portion of the Work.

3.1.4 **Subcontractors.** Contractor is responsible to County for acts and omissions of the Subcontractors and their agents and employees and other persons performing portions of the Work under a contract with a Subcontractor, of any Tier.

3.1.5 **Design Services.** Contractor shall provide professional services if such services are expressly, or by reasonable implication, required by the Contract Documents for a portion of the Work or are required in order for Contractor to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Professional design services or certifications so required of Contractor shall be furnished by design professionals exercising the highest standard of care and utilizing designs and engineering that comply with all systems, materials or equipment, performance and design criteria set forth in the Contract Documents. Certification by a properly licensed design professional, including such professional's signature and seal, shall appear on all drawings, calculations, specifications, certifications and other documents prepared by such professional. Submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted. County, Architect and County Consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

3.2 REVIEW OF DOCUMENTS, SITE AND EXISTING IMPROVEMENTS

3.2.1 **Contractor's Duty of Review.** Contractor's submission of its Bid and execution of the Construction Contract constitutes its representation, acknowledgement and agreement that it had sufficient time, access and opportunity prior to the Bid Closing Deadline to conduct a careful and thorough examination, to its satisfaction, of:

.1 the Bidding Documents, Contract Documents, Reference Documents and other information provided by County to Contractor prior to the Bid Closing Deadline concerning the Project, Site or Existing Improvements;

.2 the visible conditions at the Site and its surroundings, visible conditions of Existing Improvements and their existing uses by County or the public, routes of ingress and egress, and local conditions in the vicinity of the Site (including, without limitation, sources and availability of labor, materials and equipment);

.3 the status of any construction at the Site concurrently under construction; and

.4 all information concerning visible and concealed conditions above and below the surface of the ground at the Site and in Existing Improvements (including, without limitation, surveys, reports, data, as-built drawings of Existing Improvements and utility sources, capacities and locations) that was either (1) provided by County to Contractor or other Bidders (including, but not limited to, the Bidding Documents and Reference Documents) or (2) reasonably available to Contractor for review in the public records of the County of Riverside or the City in which the Project is located.

3.2.2 Contract Adjustments.

.1 **Differing Site Conditions.** Except as otherwise provided in Subparagraph 3.2.3, below, the Contractor's right to a Contract Adjustment in the event Contractor encounters conditions at the Site or in Existing Improvements that vary from those indicated by the Contract Documents or other information that was either reviewed by Contractor or that Contractor was given the opportunity to review prior to the Bid Closing Deadline shall be governed exclusively by Paragraph 4.3.8, below, pertaining to Differing Site Conditions.

.2 **Design Discrepancies.** Except as otherwise provided in Subparagraph 3.2.3, below, and subject to the Contractor's compliance with the other provisions of the Contract Documents governing the Contractor's right to a Contract Adjustment (including, without limitation, Article 7 and Article 8, below), Contractor shall be entitled to a Contract Adjustment due to Design Discrepancies, subject to the following conditions and limitations:

(1) Compensable Change. There shall be no Contract Adjustment to the Contract Price for Extra Work that the Contractor is required to perform as a result of a Design Discrepancy unless all of the following conditions have been met prior to Contractor or any Subcontractor performing any portion of the Work involving or affected by such Design Discrepancy:

(a) the circumstances giving rise to such Extra Work conform to all of the requirements of Subparagraph 1.1.29.2 through Subparagraph 1.1.29.4, above, applicable to Compensable Changes;

(b) Contractor has submitted to County and Architect a Request for Information in compliance with Paragraph 3.2.5, below, seeking clarification of such Design Discrepancy;

(c) Contractor has submitted to County a timely and complete Notice of Change in accordance with Article 7, below, describing such Extra Work in detail;

(d) Contractor has received a Construction Change Directive signed by County in accordance with Article 7, below, directing that Contractor perform the portion of the Work in question; and

(e) unless otherwise provided in such Construction Change Directive, Contractor has submitted to County a Change Order Request in accordance with the requirements of Article 7, below, setting forth the particulars of its request for Contract Adjustment on account of such Extra Work.

(2) Compensable Delay. There shall be no Contract Adjustment to the Contract Price or Contract Time for Delay as a result of a Design Discrepancy unless all of the following conditions have been met prior to Contractor or any Subcontractor performing any portion of the Work involving or affected by such Design Discrepancy:

(a) if the Delay is the result, in whole or in part, of Extra Work, all of the requirements of Subparagraph 3.2.2.2 (1), (a) through (e), above, have been met;

(b) the circumstances giving rise to such Delay conform to all of the requirements of Subparagraph 1.1.30.2 and Subparagraph 1.1.30.3, above, applicable to Compensable Delay; and

(c) Contractor has submitted to County a timely and complete Notice of Delay and a timely and complete Request for Extension in accordance with Article 8, below, setting forth the particulars of its request for Contract Adjustment on account of such Compensable Delay.

(3) Differing Site Conditions. The Contractor's right to a Contract Adjustment as a result of variances between (a) the Contract Documents or other documents or information described in Paragraph 3.2.1, above, that, prior to the Bid Closing Deadline was either reviewed by Contractor or was available to Contractor for review prior to the Bid Closing Deadline and (b) conditions at the Site or in Existing Improvements shall, notwithstanding the fact that the circumstances asserted by Contractor as a basis for such Contract Adjustment may involve, relate to or arise out of a Design Discrepancy, be governed by the provisions of the Contract Documents setting forth the Contractor's right to Contract Adjustments on the grounds of Differing Site Conditions.

3.2.3 WAIVER BY CONTRACTOR.

CONTRACTOR AGREES THAT IT SHALL NOT BE ENTITLED TO, AND HEREBY CONCLUSIVELY WAIVES, ANY RIGHT TO CONTRACT ADJUSTMENT, AS WELL AS THE RIGHT TO ANY OTHER OR FURTHER RECOURSE OR RIGHT OF RECOVERY FROM COUNTY, ON ACCOUNT OF LOSSES OR DELAYS THAT ARE A RESULT OF EITHER A DIFFERING SITE CONDITION OR A DESIGN DISCREPANCY, IF PRIOR TO THE BID CLOSING DEADLINE SUCH DIFFERING SITE CONDITION OR DESIGN DISCREPANCY WAS:

(1) DISCOVERED BY CONTRACTOR AND CONTRACTOR, NOTWITHSTANDING SUCH DISCOVERY, FAILED TO REPORT SUCH DIFFERING SITE CONDITION OR DESIGN DISCREPANCY TO COUNTY IN WRITING PRIOR TO THE BID CLOSING DEADLINE;

(2) **ALTHOUGH NOT ACTUALLY DISCOVERED BY CONTRACTOR PRIOR TO THE BID CLOSING DEADLINE WAS REASONABLY DISCOVERABLE BY CONTRACTOR UNDER THE STANDARD OF PERFORMANCE SPECIFIED IN THE CONSTRUCTION CONTRACT, INCLUDING, WITHOUT LIMITATION, A DIFFERING SITE CONDITION OR DESIGN DISCREPANCY THAT WAS OVERLOOKED BY CONTRACTOR DUE TO A FAILURE BY CONTRACTOR TO FULLY FAMILIARIZE ITSELF PRIOR TO THE BID CLOSING DEADLINE WITH ANY OF THE DOCUMENTS, INFORMATION OR CONDITIONS REFERRED TO IN PARAGRAPH 3.2.1, ABOVE.**

3.2.4 Continuing Obligation. In addition and without limitation to Contractor's obligations under Paragraph 3.2.1, above, or elsewhere in the Contract Documents, Contractor shall have the continuing obligation until Final Completion to promptly report to County, by means of submission by Contractor of a Request for Information that complies with the requirements of Paragraph 3.2.5, below, any and all of the following:

.1 information contained in the Bidding Documents, Contract Documents, Reference Documents or other documentation that was either reviewed by Contractor or that Contractor was given the opportunity to review prior to the Bid Closing Deadline, as well as any visible conditions at the Site, in Existing Improvements or in the vicinity of the Project, that Contractor knows, or in the exercise by Contractor of its duties under the Standard of Performance should have known, may render a portion of the Work in any respect, wholly or partially, unsuitable or incomplete to meet the requirements of the Contract Documents, the Design Intent or Applicable Laws, and

.2 conditions in the Work that constitute Defective Work or that cause or are likely to cause any other portion of the Work to be Defective Work.

Without limitation to County's other rights under the Contract Documents, any portion of the Work, Existing Improvements or the work of Separate Contractors or County's own forces requiring replacement, repair or correction due to a failure by Contractor or any Subcontractor, of any Tier, to comply with its continuing obligation under this Paragraph 3.2.4 shall be promptly replaced, repaired or corrected to County's satisfaction, at Contractor's Own Expense.

3.2.5 Requests for Information.

.1 **Time for Submittal.** Requests for Information shall be submitted no later than three (3) Days after the date Contractor learns of the circumstances giving rise to the question contained in the Request for Information. Requests for Information shall be submitted by or through the Contractor and not directly by Subcontractors.

.2 **Content.** Each Request for Information shall, in addition to the Contractor's specific question or request, include the following:

(1) a detailed description of the circumstances giving rise to the Contractor's request or question, including, without limitation, any related Design Discrepancy;

(2) Contractor's request for clarification, including, without limitation, any request for further detailing or correction of the Contract Documents; and

(3) a statement of whether Contractor believes it is entitled to a Contract Adjustment by reason of the circumstances described.

.3 **Form.** Contractor shall submit Requests for Information using forms provided or approved by County.

.4 **Unnecessary, Multiple Requests.** Contractor shall carefully review, coordinate and consolidate (where appropriate to prevent piecemeal submission) Requests for Information (whether originating with Contractor or the Subcontractors) prior to submitting them in order to eliminate unnecessary or duplicative requests.

.5 Responses. Responses to Requests for Information shall be furnished with reasonable promptness so as to not unreasonably Delay progress of the Work; provided, however, that the timing of a response by the Architect, County or a County Consultant to a Request for Information shall not constitute grounds for a Contract Adjustment unless Contractor has complied with the requirements set forth in this Paragraph 3.2.5 and, if applicable, Paragraph 2.1.3, above.

.6 Back Charges by County. County shall have the right to deduct from payments due to Contractor sums expended by County for the services of the Architect, Inspectors of Record or County Consultants due to a failure by Contractor to comply with this Paragraph 3.2.5.

.7 WAIVER BY CONTRACTOR.

FAILURE BY CONTRACTOR TO SUBMIT A REQUEST FOR INFORMATION IN ACCORDANCE WITH AND UNDER CIRCUMSTANCES IN WHICH A REQUEST FOR INFORMATION WAS REQUIRED BY THIS PARAGRAPH 3.2.5 SHALL RESULT IN CONTRACTOR WAIVING ITS RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF ANY LOSS OR DELAY THAT COULD HAVE BEEN AVOIDED IF SUCH REQUEST FOR INFORMATION HAD BEEN PROPERLY PREPARED AND TIMELY SUBMITTED.

3.2.6 Correction of Work. Contractor shall, at Contractor's Own Expense, correct or replace in accordance with the direction of County any portion of the Work that is performed by Contractor or a Subcontractor knowing that it involves, or that Contractor or Subcontractor in the exercise of reasonable care and diligence should have known involves, a portion of the Contract Documents that contains an error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Laws, without first notifying and obtaining the written approval of County and Architect.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 General Obligation. Contractor shall provide competent, fully qualified personnel to supervise, administer, manage and direct the Work, competently and efficiently, at all times devoting their best skill and attention to perform the Work in accordance with the Contract Documents.

3.3.2 Supervisory Staff. Contractor shall employ a competent project manager, superintendent, scheduler, forepersons and necessary assistants during performance of the Work. Contractor's superintendent and forepersons shall be present at the Site at all times that the Work is in progress and at any time that any employee of Contractor or a Subcontractor is present at the Site. Contractor's project manager and superintendent shall, unless excused from attendance by the County, attend all job meetings. Contractor's project manager and superintendent must be able to fluently read and write in English. Contractor's superintendent shall not perform the Work of any trade, pick up materials, or perform any Work not directly related to the supervision of the Work and shall be available twenty-four (24) hours a Day, seven (7) Days a week, to respond to emergencies.

3.3.3 County Supplementary Personnel. Without limitation upon any of the rights or remedies of the County under the Contract Documents or under Applicable Laws, in the event that Contractor fails to have personnel on Site to supervise the Work, the County shall have the right, but not the obligation, upon twenty-four (24) hours' telephonic or email notice by the County to Contractor, to provide such supervision on a temporary basis and to deduct from the sums owing to Contractor the actual costs of such temporary supervision. Contractor shall, notwithstanding the County's providing such temporary supervision, remain solely responsible for all actions and omissions of its personnel and of the Subcontractors.

3.3.4 Means, Methods, Procedures. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and coordinating all portions of the Work, unless the Contract Documents specify other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, Contractor shall nonetheless be fully and solely responsible for the adequacy and safe implementation of such means, methods, techniques, sequences or procedures. If Contractor believes that such specified means, methods, techniques, sequences or procedures may not be safe or adequate, Contractor shall give written notice to County and Architect and shall not proceed with that portion of the Work without further written instruction from County or Architect. In response to such notice, County may order Contractor to improve the character or increase the efficiency

of the means, methods, techniques, sequences or procedures employed, and Contractor shall conform to such order; but the failure of County to order such improvement or increase of efficiency will neither relieve Contractor from its sole responsibility for safety at the Site nor relieve Contractor from its obligation to perform the Work in accordance with the Contract Documents and Applicable Laws.

3.4 LABOR, MATERIALS AND EQUIPMENT

3.4.1 **Costs of Work.** Contractor shall provide and pay for labor, materials, tools, equipment, machinery, water, heat, utilities, transportation, facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether incorporated or to be incorporated into the Work.

3.4.2 **Coordination.** Contractor shall provide supervision sufficient to ensure proper coordination for the timely and efficient performance and completion of the Work.

3.4.3 **Field Conditions.** Before commencing the Work or any activities on the Site, Contractor shall take field measurements and verify field conditions and carefully compare such field measurements and conditions with the information in the Contract Documents and other information obtained by or available to Contractor.

3.4.4 **Layout.** Contractor is solely responsible for (1) the accurate layout of all portions of the Work, (2) the accuracy of the Project lines and levels, (3) erection of the Work square, plumb, level, true to line and grade, in the exact plane, and to the correct elevation and (4) sloping of surfaces to drain as indicated by the Contract Documents, or, if not indicated, as needed to provide for adequate drainage.

3.4.5 Materials, Equipment

.1 **Delivery, Storage, Inventory.** Materials and equipment shall be: (1) furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work; and (2) if located on the Site, properly stored and protected as reasonable and necessary, or as directed by County, to prevent Loss from any foreseeable cause, including, without limitation, theft. In the event that County gives direction as to the location for storage or protection of materials or equipment on the Site, Contractor shall nonetheless remain solely responsible for its safe and secure storage and protection. No part of any such stored materials and equipment shall be removed from its place of storage except for immediate installation in the Work. Contractor shall keep an accurate inventory of all such stored materials and/or equipment in a manner satisfactory to County.

.2 **Purchases.** Contractor shall place orders for materials and/or equipment as specified so that delivery of same may be made without Delay to the Work. Contractor shall, upon request from County, furnish to County documentary evidence showing that orders have been placed. County reserves the right in the event Contractor fails, within three (3) Days after receipt of written notice by County to Contractor to comply with the requirements of this Subparagraph 3.4.5.2, to comply with the requirements of this Subparagraph 3.4.5.2, to deduct the costs paid or payable by County associated with such purchases from payments otherwise owing to Contractor. Contractor shall, if requested by County, accept assignment of any such contracts entered into by County without a Contract Adjustment.

.3 **Title.** No material, supplies or equipment for the Work shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies and equipment installed or incorporated in the Work and agrees upon Final Completion to deliver the Work, including the premises, land, improvements and appurtenances on or to which the Work is placed, located or affixed, to County free from any claims, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any of the Work shall have any right of lien upon the Site, or any Existing Improvement or appurtenance thereon, except that (1) nothing stated in this Subparagraph 3.4.5.3 shall be interpreted as a waiver by Contractor or any Subcontractor of its right under Applicable Laws to serve a stop payment notice for Work that is not paid for by County as required under the terms of the Contract Documents; and (2) Contractor may install metering devices or other equipment of utility companies or political subdivisions, title to which may be retained by such utility company or political subdivision, provided that in the event of installation of any such metering device or utility equipment, Contractor shall advise County as to the owner, and the precise location, thereof.

.4 Substitutions. No substitution of materials, equipment, articles, processes or other items of the Work required under the Contract Documents will be made without written approval of County, which approval may be granted or denied in the sole and absolute discretion of County. With respect to any such substitution made or requested by Contractor, neither the occurrence of a substitution made or requested by Contractor nor the approval or disapproval by County of a substitution that is made in accordance with this Subparagraph 3.4.5.4 shall give rise to any right of Contractor to a Contract Adjustment. Contractor shall, notwithstanding County's or Architect's approval, remain solely responsible for the sufficiency and suitability of all substitutions requested by Contractor and approved, or otherwise made, by Contractor.

.5 Parts List. Contractor will provide a printed parts list for all items which might be subject to replacement and for which parts lists are either expressly required by the Contract Documents or customarily provided according to usual commercial practices.

.6 Manuals. As part of its obligation for submission of Record Documents, four (4) hard copies and one (1) electronic version of operations and maintenance manuals shall be prepared and transmitted by Contractor to County prior to and as a condition of Final Completion. Final Payment will not be due until County has received all such manuals and all other manuals covering the Work that are either required to be provided by the terms of the Contract Documents or if not required are customarily provided according to usual commercial practices applicable to the portion of Work involved. Operating instructions will be included within the equipment manuals and will state all information necessary for County to operate, use, maintain and service the equipment fully and efficiently.

.7 Start Up. Contractor will be responsible for start-up of all systems and equipment purchased as part of the Work and has included sufficient amounts in its Bid to cover contingencies arising out of the start-up of such systems and equipment. Contractor will comply fully with each manufacturer's specifications and instructions. Systems and equipment specified to be furnished with manufacturer's supervision of start-up will be placed in operation only under such supervision.

3.5 CONTRACTOR'S WARRANTY

3.5.1 General Warranty. In addition to other warranties and guarantees required by the Contract Documents, Contractor shall, and hereby does, warrant and guarantee that: (1) the Work will conform to the requirements of Contract Documents, including, without limitation, any performance standards that are part thereof; (2) all Work for which there is not a specific requirement, criteria, specification or standard set forth in the Contract Documents will conform to the Standard of Performance; (3) all labor, equipment, materials and other items of Work will be when installed new and free of liens, claims and security interests; (4) without limitation to the other requirements of this warranty, all labor, installation and workmanship will be performed in a good and workmanlike manner; and (5) all labor, materials, equipment, services and work shall be free of defects for a period of one (1) year after Final Completion. If required by County, Contractor shall furnish satisfactory evidence as to the kind and quality of services, labor, installation, materials and equipment used. Manufactured items installed in the Work, unless otherwise specifically stated in the Contract Documents, are to be installed in strict accordance with manufacturer's current printed instructions.

3.5.2 Repair, Replacement. Without limitation upon the County's other rights or remedies under the Contract Documents or Applicable Laws, any and all Work that, for reasons other than (1) ordinary wear and tear or (2) abuse or neglect by persons or entities other than the Contractor or the Subcontractors, is not in conformance with the warranties or guarantees required by the Contract Documents or Applicable Laws shall be repaired or replaced, together with the repair or replacement of any other Work, Existing Improvements or the work of the Separate Contractors, the County's own forces or others, which may be removed, displaced or damaged in so doing. The Contractor shall notify the County in writing upon completion of such repair or replacement. In the event of failure by the Contractor to commence and pursue with diligence said replacement or repair within ten (10) Days after being notified by the County, the County is hereby authorized to proceed with such replacement and repair as the County deems necessary and expedient and to charge such costs to Contractor at Contractor's Own Expense.

3.5.3 Not a Limitation. The warranties stated in this Section 3.5 are in addition to any other warranties or guarantees that are required under any other provision of the Contract Documents or Applicable Laws. Nothing stated in this Section 3.5 shall be interpreted as a limitation upon the County's rights under any warranties or

guarantees provided for under any other provision of the Contract Documents or under Applicable Laws that afford the County greater rights than the rights afforded to County under this Section 3.5.

3.5.4 Assignment. Contractor does hereby unconditionally and irrevocably assign to County all warranties and guarantees issued or made by any Subcontractor, of any Tier (including, without limitation, any manufacturer, supplier and distributor) in connection with the Work. Such assignment shall not relieve Contractor of, or otherwise limit, any of its obligations contained in the Contract Documents, including, without limitation, the general responsibility and liability of Contractor for a breach by a Subcontractor (including, without limitation, any manufacturer, supplier and distributor, of any Tier) of a warranty or guarantee given by such Subcontractor in connection with the Work.

3.5.5 Close-Out. Unless sooner requested by County, Contractor shall furnish to County, as part of the Close-Out Documents and as a condition to Final Payment, all written guarantees or warranties that are required by the terms of the Contract Documents. All such guarantees and warranties shall be: (1) in writing; (2) indexed and bound; (3) accompanied by such certifications and instruction materials as may be required by the Contract Documents; and (4) issued to County or assignable by their terms, and in fact assigned, to County.

3.6 TAXES

3.6.1 Payment by Contractor. Contractor shall pay, at Contractor's Own Expense, all local, state and federal taxes, including, without limitation, all sales, consumer, business license, use and similar taxes on materials, labor or other items furnished for the Work or portions thereof provided by Contractor or the Subcontractors, of all Tier, all taxes arising out of its operations under the Contract Documents and all benefits, insurance, taxes and contributions for social security and unemployment insurance which are measured by wages, salaries or other remuneration paid to Contractor's employees. If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed, and the sale is exempt from such excise tax because it is a sale to a state or local government, then County, upon request, will execute documents necessary to show: (1) that County is a political subdivision of the State for the purposes of such exemption; and (2) that the sale is for the exclusive use of County. No excise tax for such materials shall be included in any price (including, without limitation, the Bid) submitted by Contractor for the Work or for Changes in the Work.

3.6.2 Tax Exempt Projects. If applicable to the Project, Contractor shall comply with Applicable Laws concerning tax-exempt construction projects.

3.6.3 Records of Taxes. Contractor and the Subcontractors shall keep sufficient records to verify the amount of sales and use taxes paid. Copies shall be submitted with each monthly Application for Payment. Failure to keep or submit such records, resulting in the inability of County to claim a refund for taxes for such materials, shall render Contractor liable to County for the amount of such tax refund.

3.7 PERMITS, FEES AND LEGAL NOTICES

3.7.1 Permits. Contractor shall obtain and pay for all permits and approvals that are not stated in the Contract Documents to be the responsibility of the County. Such permits and approvals that are the responsibility of the Contractor may include local building or land use permits, California Department of Fish and Game Streambed Alteration Agreements (Section 1600 et seq.), California Department of Fish and Game collection permits, U.S. Army Corps of Engineers 404 fill and dredge authorization, Clean Water Act Section 401 authorization (managed by the local California Regional Water Quality Control Boards) land owner agreements, or other regulatory permits or approvals required for the implementation of the Project. All permits, licenses and certificates obtained by Contractor shall be delivered to County prior and as a condition to Final Completion and Contractor's right to Final Payment.

3.7.2 Applicable Laws, Notices. Contractor shall comply with, and give notices required by, Applicable Laws bearing on performance of the Work.

3.7.3 Bonds, Undertakings. Contractor shall, without Contract Adjustment, procure and obtain all bonds required of the County or the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay, without Contract Adjustment, all charges for all approvals for street closings,

parking meter removal and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

3.7.4 Notice of Violations. Contractor shall immediately notify County in writing of any instruction received from County, or any other Project Team member that, if implemented, would cause a violation of any Applicable Law.

3.7.5 Governmental Authority Approvals. Where the Contract Documents state, or Applicable Laws require, that materials, processes or procedures must be approved by a Governmental Authority, Contractor shall be responsible for satisfying the requirements and obtaining the approval of such Governmental Authority.

3.8 CONTRACTOR'S PERSONNEL

3.8.1 Key Persons. Contractor's employees acting as project manager, scheduler and superintendent constitute Key Persons. Individuals acting as Key Persons who are not already identified in Contractor's Post-Award Submittals shall be identified in writing to County prior to commencement of the Work.

3.8.2 Background Check. Contractor shall perform, prior to commencing Work on the Site, a thorough background check of each of the Key Persons and shall not, without prior written approval of County, employ any person to act as a Key Person if such background check, or other information known to Contractor, discloses a felony conviction or other matter which casts any reasonable doubt on the competency, reliability or honesty of such person.

3.8.3 Project Manager. The Key Person acting as project manager shall be deemed to have full authority to contractually bind Contractor, including, without limitation, the authority to bind Contractor to the terms of Contract Adjustments.

3.8.4 Transfer. Contractor's Key Personnel are deemed of essence to the Construction Contract. No Key Person shall, for so long as he/she is employed by Contractor, be transferred to any other project nor any of his/her responsibilities reassigned at any time during performance of the Work without the prior written approval of County, which approval may be granted or withheld in County's sole and absolute discretion.

3.8.5 Removal. County shall have the right, at any time, to direct the removal and replacement of any Key Person if his/her performance is determined by County, in its sole and absolute discretion, to be unsatisfactory.

3.8.6 Replacement. Any individual proposed by Contractor as a replacement for a Key Person must be approved in advance by County, such approval not to be unreasonably withheld, after submission by Contractor to County of complete information concerning such individual's experience and qualifications.

3.8.7 Communications. Important communications by Key Persons shall be confirmed in writing by Contractor. Other communications by Key Persons shall be confirmed on written request in each case.

3.8.8 Contact Information. Contractor shall provide to County, prior to the start of the Work, telephone numbers where Key Persons can be reached 24-hours a day, 7 Days a week.

3.8.9 Signatures. Prior to commencing the Work, Contractor shall submit to County a facsimile of the signatures of the Key Person acting as project manager, as well as any other representatives of Contractor with authority to sign on behalf of and contractually bind Contractor.

3.8.10 Exclusion from Site. Contractor shall at all times maintain good discipline and order at the Site among its employees and the employees of the Subcontractors. Any person in the employ of Contractor or any of the Subcontractors, of any Tier, whom County deems, in its sole and absolute discretion, incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the Site and shall not again be employed on the Site except with written approval of County.

3.9 CONTRACTOR'S CONSTRUCTION SCHEDULE

3.9.1 **Preparation.** Within twenty-one (21) Days after issuance by County of the Notice of Intent to Award, the Contractor shall prepare and submit a Construction Schedule for the Work, both in hard copy and electronically, for the County's approval. The Construction Schedule shall in all respects conform to and be consistent with the time requirements for the Project set forth in the Construction Contract.

3.9.2 **Format.** The Construction Schedule shall be in the form of a critical path progress schedule that shows, in graphic form, a plan for performance of the Work within the Contract Time. It shall be prepared, using Primavera P3, as a time-scaled bar chart showing: (1) continuous flow from left to right and activities and milestones that are critical to Substantial Completion and Final Completion of the Work; (2) identification of "float"; and (3) a clearly highlighted critical path. Durations and specific calendar days shall be clearly and legibly shown for the early and late start and finish of each activity. With the exception of County Review Periods and Governmental Authority Review Periods, any activity with more than fifteen (15) Days in duration will be segmented into fifteen (15) Day increments. No more than ten percent (10%) of the activities shall be shown as critical. Techniques or methods designed to suppress depiction of available float are strictly prohibited.

3.9.3 **Detail.** Activities shown in the Construction Schedule shall be in sufficient detail to demonstrate a practical plan to complete the design, engineering, fabrication and construction within the Contract Time and shall, at a minimum, include the following:

- .1 the start and finish date of each activity;
- .2 the anticipated percent of completion at the end of each month;
- .3 the weighted labor value expressed as a percentage of the total labor cost of the Work for each activity;
- .4 the final manpower curves by trade;
- .5 the anticipated purchase and delivery of major materials and equipment;
- .6 the County's occupancy requirements;
- .7 receipt and incorporation of materials, products or equipment to be furnished by County (if any);
- .8 County Review Periods and County Review Dates that are acceptable to and approved by County;
- .9 Governmental Authority Review Periods; and
- .10 the activities identified as being on the critical path to Substantial Completion and Final Completion of the Work.

3.9.4 **Updates.** Throughout the performance of the Work, weekly updates shall be delivered, in hard copy and, if required by County, in an electronic form satisfactory to County. In addition, Contractor shall regularly prepare and submit to County short term, three (3) week "look-ahead" schedules generated from the Construction Schedule approved by County. Except to the extent permitted by Contract Adjustment to the Contract Time approved by County in a duly executed Change Order or Unilateral Change Order, in no event shall the Contractor's updates or "look ahead" schedules alter the dates for Substantial Completion or Final Completion set forth in the Construction Schedule approved by County.

3.9.5 **Governing Schedule.** The governing schedule for the Work shall be the updated Construction Schedule approved by the County. Unless otherwise directed in a writing signed by County, no other schedule shall

be used or relied upon by the Contractor or its Subcontractors in planning or performing the Work or in connection with any request for a Contract Adjustment to the Contract Time.

3.9.6 Submittal Schedule. Within twenty-one (21) Days after the receipt by the Contractor of the Notice of Intent to Award, the Contractor shall prepare and submit, in accordance with the Contract Documents, a Submittal Schedule for the County's approval. The Submittal Schedule shall be coordinated with the Construction Schedule and allow time for review of the Submittals as may be required by the Contract Documents, or if none is required, a reasonable time for such review. Contractor shall keep the Submittal Schedule current and updated in the same manner as required for updating of the Construction Schedule.

3.9.7 Schedule Responsibility. Contractor is and shall remain solely responsible, notwithstanding the County's review or approval thereof, for the accuracy, suitability and feasibility of all schedules it prepares for the Project, including, without limitation, the Construction Schedule, Submittal Schedule, "look ahead" schedules, recovery schedules and any updates thereof.

3.9.8 Condition of Payment. Compliance by Contractor with the requirements of this Section 3.9 and the other provisions of the Contract Documents pertaining to preparing, submitting, revising and updating the Construction Schedule and Submittal Schedule is a condition to County's obligation to make payment to Contractor. Recognizing that scheduling is a continuing, cumulative and recurring obligation, failure by County or to assert a right to withhold payment under this Paragraph 3.9.8 due to a noncompliance by Contractor with its schedule obligations shall not waive or diminish the County's right to withhold or disapprove of future payments on account of such prior, or any other past or future, noncompliance of the same or similar nature.

3.9.9 Scheduling by County. Without limitation to County's other rights under the Contract Documents, if Contractor fails after written notice by County to perform any part of its obligations relating to scheduling, County shall have the right, but not the obligation, to retain one or more schedule consultants to perform, in whole or in part, the Contractor's obligations or supplement the scheduling services provided by Contractor and to reimburse County for the costs of such consultant services by withholding such costs from payments to Contractor.

3.10 DOCUMENTS AT SITE, REPORTING, MEETINGS

3.10.1 Documents at Site

.1 Contract Documents, Submittals. Contractor shall at all times while performing Work at the Site maintain, in good order, at the Site: (1) one legible set of the permitted Contract Documents; (2) one legible copy of the current version of the other Contract Documents; (3) one legible and current version of approved Shop Drawings, Product Data, Samples and other Submittals; (4) one approved Storm Water Pollution Prevention Plan (SWPPP); and (5) one copy of all reports prepared pursuant to the Mitigation, Monitoring, and Reporting Program (MMRP) requirements of the California Environmental Quality Act.

.2 Record Documents. Contractor shall maintain Record Drawings and Specifications in a satisfactory record condition by posting, on a weekly basis (or, in the case of building or site mechanical, electrical, plumbing or fire sprinkler systems, as soon thereafter as is reasonable and practical), thoroughly and neatly, on the Drawings and Specifications all Changes to the Work and the location of the Work, including, without limitation, the location of portions of the Work shown diagrammatically, as occurs in the actual construction of the Work. The Record Drawings and Specifications and other Record Documents shall be prepared or converted, if requested by County, to electronic form (such as, AutoCAD, Adobe Acrobat or other software satisfactory to County). All Record Drawings and Specifications and other Record Documents shall be deemed the sole property of County and, at the earlier of Final Completion or termination of the Construction Contract, shall be turned over to County. At the time they are so turned over to County, they shall be manually signed by Contractor's superintendent certifying that, to the best of his/her knowledge, they are true and accurate and that the indications thereon represent the actual condition of the Work.

.3 Availability for Review. Copies or originals of all documents required to be maintained by Contractor at the Site or required to be submitted to County or the Architect shall be available at all times at the Site while Work is being performed for review by County, Inspector of Record, Architect and Governmental Authorities.

.4 Condition of Payment. Compliance by Contractor with the requirements of this Paragraph 3.10.1 shall be deemed a condition to Contractor's right to payment upon its Applications for Payment.

3.10.2 Daily Reports.

.1 Delivery. At the end of each Day that Contractor performs the Work on the Site, Contractor shall submit a daily report to County (on the form provided or approved by County) together with applicable delivery tickets for all labor, materials and equipment furnished that Day. If requested by County, daily reports shall be delivered electronically.

.2 Content. Daily Reports shall include the following information:

- (1) Labor - The names of the workers, and for each such worker his/her classification and hours worked.
- (2) Material - A list of the different materials used and for each different material the quantity used.
- (3) Equipment - The type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.
- (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) Visitors, Guests, Dignitaries - A list of visitors and guests by name, title, company and purpose of visit.
- (6) 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.
- (7) Accidents, Delays, Defective Work - A description in detail of any injuries to the workers, accidents or delays that occurred or Defective Work that was encountered.
- (8) Other Services and Expenditures - A description of other services and expenditures in such detail as County may require.

.3 Payment. Timely and complete submission of daily reports by Contractor shall be a condition to Contractor's right to payment under the Construction Contract.

3.10.3 Progress Meetings. Contractor shall attend all progress meetings at the Site, at which meetings progress of the Work shall be reported in detail with reference to the then-current updated Construction Schedule approved by the County. Progress meetings shall be held weekly, or at such other time or frequency as County, in its sole and absolute discretion, deems necessary. A representative of each Subcontractor then actively performing Work, or immediately scheduled to become active, shall have a competent and knowledgeable representative present at such progress meeting to report on the condition of the Work of such Subcontractor and to receive relevant information. Meeting notes shall be taken by the County or Architect and distributed to all meeting attendees and all other affected parties.

3.10.4 Notice Requirements. Under no circumstances shall information contained in Contractor's daily job reports, monthly reports or job meeting minutes relieve Contractor of its obligations to comply with, serve as a substitute for, nor constitute a waiver by County of its right to insist upon, Contractor's compliance with the provisions of the Contract Documents relative to timely and complete notice to County of Changes, Delays, Claims or other matters for which written notice is required by the Contract Documents.

3.10.5 Availability for Review. Copies or originals of all Record Documents, daily reports, job meeting minutes and other documents required to be maintained or actually maintained by Contractor at the Site or required to be submitted to County or Architect shall be available at the Site for review by County, Architect, Inspectors of Record, County Consultants and Governmental Authorities.

3.11 SUBMITTALS

3.11.1 Not Contract Documents. Shop Drawings, Product Data, Samples and other Submittals are not Contract Documents. Their purpose is to demonstrate for those portions of the Work for which Submittals are required the way Contractor proposes to conform the Work to the designs and other information in the Contract Documents.

3.11.2 Coordination with Others. Contractor shall cooperate in the coordination of Contractor's Shop Drawings, Product Data, Samples and other Submittals with related documents submitted by the Separate Contractors.

3.11.3 Submission by Contractor.

.1 Submission. All Shop Drawings, Product Data, Samples and other Submittals required by the Contract Documents shall be submitted to Architect for its review and approval, with a copy to County and to such of County's Consultants or Separate Contractors as County may direct in writing. Informational submittals (i.e., Submittals upon which no responsive action is expected) shall be limited to those Submittals so identified in the Contract Documents. Submittals made by Contractor which are not required by the Contract Documents may be returned without action.

.2 Contractor Approval. The Contractor shall review, stamp "approved" and submit Contractor's Shop Drawings, Product Data, Samples and other Submittals to the Architect, in accordance with the latest Submittal Schedule approved by the County. The Contractor's approval and submission of Submittals constitutes a representation that the Contractor has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such Submittals with the requirements of the Contract Documents and with the Submittals for related Work. Submittals without evidence thereon of the Contractor's approval shall be returned, without further consideration, for resubmission in accordance with these requirements.

.3 Transmittal. All Submittals shall be accompanied by an accurately completed transmittal in the form required by County. With respect to Submittals of documents, the transmittal shall give a list of the numbers of the sheets submitted. All sheets shall be marked with the name of the Project and the name of Contractor shall be numbered consecutively and referenced to the sheets or paragraphs of the Drawings and Specifications affected. A separate transmittal form shall be used for each specific item or class of material or equipment for which a Submittal is required. Transmission of Submittals of various items using a single transmittal form will be permitted only when the items taken together constitute a manufacturer's "package" or are so functionally related that expediency dictates review of the group or package as a whole. Any Submittal not accompanied by such transmittal form, or where all applicable items on the form are not completed, may be returned for re-submittal without review.

.4 Timing. Submittals shall be provided within the time frame specified in the Contract Documents, in accordance with the Construction Schedule and Submittal Schedule and at a time sufficiently early to allow review of the same by the Architect without causing Delay to construction progress. Contractor will be responsible to pay, at Contractor's Own Expense, additional services fees and costs incurred by County to the Architect, Inspectors of Record and County Consultants in order to expedite review of Submittals which are not submitted in a timely fashion.

.5 Content. Submittals shall consist of the appropriate combination of catalog sheets, material lists, manufacturer's brochures, technical bulletins, specifications, diagrams and product samples, necessary to describe a system, product or item. Submittals shall show in detail the size, sections and dimensions of all members, the arrangement and construction of all connections, joints and other pertinent details, and all holes, straps and other fittings for attaching the Work. When required by the Architect or the Contract Documents, engineering computations shall be submitted.

.6 Professional Certifications. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

.7 Multiple Submittals. Except where the preparation of a Submittal is dependent upon the approval of a prior Submittal, all Submittals pertaining to the same class or portion of the Work shall be submitted simultaneously.

.8 Notation of Revisions. Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or other Submittals, to revisions other than those requested and approved by Architect on previous Submittals.

.9 Duplicates. Contractor shall be responsible for delivering duplicates of Submittals to all other persons whose work or services are dependent thereon.

3.11.4 Review of Submittals. Review of Submittals by Architect, County or County Consultants is subject to the limitations of Paragraph 4.2.6, below. Contractor shall, notwithstanding any review or approval thereof by County, Architect or a County Consultant, be solely responsible for the content of all Submittals. Without limitation to the foregoing, deviations in Submittals from requirements of the Contract Documents shall remain the sole responsibility of Contractor unless Contractor has specifically informed Architect in writing of such deviation at the time of submission of the Submittal and Architect has given specific written approval thereof.

3.11.5 Contract Adjustments. Subject to Contractor's rights and obligations under Article 7, below, revisions indicated on Shop Drawings, Product Data, Samples or other Submittals shall not be considered as a basis for Contract Adjustments.

3.11.6 Compliance with Contract. Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or other Submittals until the respective Submittal has been returned by the Architect with an indication that it has been reviewed and that the Work addressed by the Submittal may proceed. Such Work shall be in accordance with such Submittals, unless such Submittal indicates that there are corrections to be made. If corrections are indicated to be made then the Work shall be in accordance with the re-submitted and corrected Submittal that is reviewed and returned to the Contractor by the Architect.

3.12 USE OF SITE

3.12.1 Staging Area. Contractor will be assigned staging space on or adjacent to the Site, and all field offices, materials and equipment shall be kept within this area. Unless otherwise required by the Contract Documents, Contractor shall be responsible for restoring such areas and surrounding areas to the condition they were in prior to Contractor's commencement of the Work.

3.12.2 Existing Improvements. During the installation of the Work, Contractor shall ensure that Existing Improvements are adequately protected. Upon Final Completion of the Work, all Existing Improvements not required by the Contract Documents to be demolished as part of the Work that have been damaged by the actions or inactions of Contractor or its Subcontractors shall be restored to the condition they were in prior to Contractor's commencement of the Work.

3.12.3 Operations at Site. Contractor shall confine its activity, access and parking at the Site to areas permitted by Applicable Laws and County and shall not unreasonably encumber the Site with materials or equipment. Contractor acknowledges that it is experienced in performing construction within limited and confined areas and spaces such as those that are anticipated to exist on this Project and agrees to assume responsibility, without a Contract Adjustment, to take all special measures (including, without limitation, those related to protection, storage, staging and deliveries) as may be necessary to adapt its performance to the constraints of the Site.

3.12.4 Coordination. Contractor shall coordinate Contractor's operations with, and secure the approval of, County before using any portion of the Site.

3.12.5 Unauthorized Use. Personnel of Contractor and the Subcontractors shall not occupy, live upon or otherwise make use of the Site during any time that the Work is not being performed at the Site, except as otherwise approved by County.

3.12.6 Site Security. Contractor is responsible for the security of the Site and all of the Work, as well as the work of the Separate Contractors or County's own forces that occurs on the Site. Fences, barricades and other perimeter security shall be maintained in good condition and secured with locking devices. Damage to fences, barricades or other perimeter security, regardless of the cause, shall be repaired immediately at Contractor's Own Expense. Graffiti and unauthorized postings shall be removed or painted over so as to maintain a clean and neat appearance. Mobile equipment and operable machinery shall be kept locked or otherwise made inoperable whenever left unattended.

3.12.7 Persons on Site. Contractor shall not allow any person, other than the workers on the Project, authorized representatives of a union, or other individuals authorized by County, to come upon any portion of the Site where the Work is being performed. Only authorized personnel will be permitted on the Site. Contractor shall at all times maintain good discipline and order among its employees and the employees of the Subcontractors. Any person in the employ of Contractor or of any Subcontractors whom County may deem, in its sole and absolute discretion, incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the Site and shall not again be employed on the Site except with written approval of County and all Losses to Contractor or County associated therewith shall be borne by Contractor at Contractor's Own Expense.

3.12.8 County Uses and Activities. Contractor shall, prior to performing the Work at an operating or occupied County facility, become informed and take into specific account the uses by County and others of the Site and Existing Improvements, including, without limitation, business operations, public uses, employee uses, visitor uses, planned functions and ceremonies, and coordinate its planning, staging, scheduling, barricading and other performance of the Work so as to cause the minimum amount of interference or disturbance, whether before or after operating hours.

3.12.9 Dust, Fumes, Noise. Contractor shall take preventive measures to minimize, and eliminate wherever reasonably possible, generation of dust, fumes and noise.

3.12.10 Confinement of Operations. Contractor shall confine apparatus, the storage of materials and the operations of the workers to limits indicated by Contract Documents or as otherwise directed by County in writing.

3.12.11 Prohibited Substances. Contractor shall not permit (1) the possession or use of alcohol or controlled substances on the Site or (2) smoking in other than designated smoking areas approved by County.

3.12.12 Survey Markers. Contractor shall not disturb or cover any survey markers, monuments or other devices marking property boundaries or corners. If such markers are covered they shall be uncovered and if disturbed they shall be replaced by Contractor by means of the services of a licensed land surveyor. The costs of such uncovering and replacement shall be at Contractor's Own Expense.

3.12.13 Drainage, Erosion. Contractor is responsible for and shall make corrections to changes in patterns of surface water drainage resulting from, and related erosion control made necessary by, the performance of the Work.

3.12.14 Trenches. As required by California Labor Code §6705, if the Contract Price exceeds Twenty-Five Thousand Dollars (\$25,000) and involves the excavation of any trench or trenches five (5) feet or more in depth, Contractor shall, in advance of commencing excavation, submit to County a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring Systems Standards established by the Construction Safety Orders of the California Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer, employed by Contractor at Contractor's Own Expense. Nothing in this Paragraph 3.12.14 shall be deemed to allow the use of a system less effective than that required by such Construction Safety Orders. No excavation of such trench or trenches shall be commenced until such plan has been approved by County and Architect. Nothing in this Paragraph 3.12.14 shall be construed to impose any liability, including, without limitation, any tort liability, upon the County or upon any of its officers, agents, representatives or employees.

3.13 CUTTING AND PATCHING

Contractor shall be responsible for all cutting, fitting or patching required to complete the Work and to make its parts fit together properly both among themselves and with any Existing Improvements and the work of the Separate Contractors and of County's own forces. In all cases, cutting shall be performed under the supervision of competent mechanics skilled in the applicable trade and openings shall be cut as small as possible to prevent unnecessary damage. Contractor shall not damage or endanger a portion of the Work, Existing Improvements or fully or partially completed construction of County's own forces or of the Separate Contractors by cutting, patching, excavating or otherwise altering such construction. Contractor shall not cut or otherwise alter such Existing Improvements or construction by Separate Contractors or by County's own forces except with the written consent of such Separate Contractors or County, which consent shall not be unreasonably withheld, delayed or conditioned. When asked, Contractor shall not unreasonably withhold from the Separate Contractors or County the Contractor's consent to Separate Contractors' or County's own forces' cutting or other alteration of the Work as required to complete the work of the Separate Contractors or County's own forces.

3.14 UTILITIES AND SANITARY FACILITIES

3.14.1 Contractor Responsibility. Except as otherwise required by California Government Code §4215, Contractor shall contact all relevant utility providers and arrange for obtaining all available information, concerning location of subsurface utility lines. Prior to commencement of any digging, Contractor shall make its own investigation, including exploratory excavations, to determine the locations and type of Work which could result in damage to such utilities. In accordance with California Government Code §§4216 et seq., except in an emergency, Contractor shall contact the appropriate regional notification center at least two (2) the working days, but not more than fourteen (14) Days, prior to commencing any excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain sub-service installations, and shall obtain an inquiry identification number from the regional notification center. Contractor shall not assume, unless actual observed surface conditions at the Site indicate otherwise, that utilities are located in the same location as indicated on the as-built records or other information obtained by Contractor. Contractor shall conduct potholing in advance of digging in any areas where there are not apparent surface conditions at the Site indicating the actual location of underground utilities and be at all times vigilant in watching for any conditions encountered, above or below the surface of the ground, that might indicate that underground utilities are at locations other than those indicated by the as-built records or other information obtained by Contractor. Contractor shall perform its digging operations in a slow and meticulous manner so as to avoid wherever reasonably possible damaging existing underground utilities. Contractor shall, at Contractor's Own Expense, make good any Loss to County or others as a result of Contractor's failure to perform any of its obligations under this Paragraph 3.14.1. Nothing stated in this Paragraph 3.14.1 shall be interpreted as requiring Contractor to do subsurface exploration or potholing for the purpose of locating subsurface utilities at the Site prior to the Bid Closing Deadline or as precluding the Contractor from receiving a Contract Adjustment for unknown subsurface utilities constituting Differing Site Conditions that are encountered in the course of performing the Site investigation or potholing required by this Paragraph 3.14.1.

3.14.2 County Responsibility. If and to the extent required by California Government Code §4215, County assumes the responsibility for removal, relocation, and protection of those existing main or trunkline utility facilities located at the Site at the time of commencement of the Work that are not identified in the Contract Documents. Provided that Contractor has exercised the Standard of Care in performing the Work in accordance with the Contract Documents, Contractor shall be entitled to a Contract Adjustment for, relocating, repairing or removing any utility facilities not indicated in the Contract Documents with reasonable accuracy, including, without limitation, equipment on the Site necessarily idled thereby. Delays caused by County's or a utility owner's failure to provide for the removal or relocation of such utility facilities shall constitute a Compensable Delay. Nothing herein shall be deemed to require County to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings or meter junction boxes located on or adjacent to the Site.

3.14.3 Temporary Utilities. All utilities, including but not limited to electricity, water, gas and telephone, used in performance of the Work (including, without limitation, meters and temporary distribution systems from distribution points to points on Site where a utility is needed and "tap fees") shall be furnished and paid for by Contractor or, if furnished by County, shall be paid for by Contractor at Contractor's Own Expense. Upon Final Completion of the Work, Contractor shall remove all temporary distribution systems. If the Work involves an addition

to an existing facility, Contractor may, with written permission of County, granted or withheld in County's sole and absolute discretion, use County's existing utilities by making prearranged payments to County for utilities used by Contractor. When it is necessary to interrupt any existing utility service to make connections, a minimum of two (2) working days' advance notice shall be given to County. Interruptions shall be of the shortest possible duration and shall be scheduled during a time of Day that minimizes its impact on the operations of the existing facility. Any Loss to County or Contractor associated with interruption of a utility service as a result of Contractor's breach of, or failure to fully comply with, its obligations under this Paragraph shall be paid for by Contractor at Contractor's Own Expense.

3.14.4 Sanitary Facilities. Contractor shall provide sanitary temporary toilet facilities, for the use of all the workers, in no fewer numbers than required by Applicable Laws, plus such additional facilities as may be directed by County. Such facilities shall be maintained in a sanitary condition at all times. Use of existing or permanent toilet facilities shall not be permitted except by written consent of County.

3.15 CLEANING UP

3.15.1 Contractor Responsibility. Contractor at all times shall keep the Site free from debris such as waste, rubbish and excess materials and equipment caused by the performance of the Work. At the end of each Day that Work is performed, Contractor shall not leave debris under, in or about the Site but shall promptly dispose of or remove same from the Site. Without limitation to the other clean up requirements of the Contract Documents, upon Final Completion, Contractor shall: (1) clean the interior and exterior of the buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections and any areas where debris has collected so surfaces are free from foreign material or discoloration; (2) clean and polish all glass, plumbing fixtures, finish hardware and similar finish surfaces and equipment; and (3) remove temporary fencing, barricades, planking, sanitary facilities and similar temporary facilities from the Site.

3.15.2 Cleanup by County. If Contractor fails upon 24 hours' notice by County to perform its obligation to clean up, County may arrange to do so, and the cost thereof shall be borne by Contractor at Contractor's Own Expense.

3.16 ACCESS TO THE WORK

3.16.1 County. County, Inspectors of Record, Architect and County Consultants, and their representatives, and such other persons as authorized by County, shall at all times have access to the Work, either in preparation or in progress. Contractor shall provide safe and proper facilities for such access so that they and their representatives may perform their functions safely.

3.16.2 Separate Contractors. County, using its own forces or those of Separate Contractors, may, at any time during the performance of the Work, enter the Site for the purpose of performing construction or for any other purpose. Contractor shall cooperate with County, County's own forces and Separate Contractors and not interfere with other work being done by them or on their behalf.

3.16.3 Delivery Routes. Contractor shall arrange for delivery of material over routes designated by County.

3.17 INTELLECTUAL PROPERTY RIGHTS

Contractor shall pay all royalties and license fees relating to use of Intellectual Property Rights pertaining to Work performed. Contractor shall defend suits or claims for infringement of Intellectual Property Rights and shall defend, indemnify and hold harmless the Indemnitees from Loss on account thereof in accordance with the terms of Section 3.18, below, unless the infringement is due to a particular design, process, product or product of a particular manufacturer that is required by the Contract Documents; provided, however, that if Contractor has information leading it to believe that the use of a particular design, process or product required by the Contract Documents would constitute an infringement of an Intellectual Property Right, then Contractor shall nonetheless be responsible to provide such defense, indemnification and hold harmless if such information is not promptly furnished in writing to County.

3.18 INDEMNIFICATION

3.18.1 Contractor's Indemnity Obligation. To the fullest extent permitted by Applicable Laws, Contractor agrees to indemnify, immediately defend at its own expense and hold harmless, County, Board of Supervisors, and each of their respective members, officers, employees, agents, insurers and volunteers ("Indemnitee(s)"), through legal counsel reasonably acceptable to County, from any and all Losses, whether real or alleged, regardless of whether caused in part by such Indemnitee or its agents, servants or independent contractors who are directly responsible to such Indemnitee, arising out of or relating to any of the following:

- .1 any act or omission of Contractor or a Subcontractor, of any Tier;
- .2 the activities of Contractor or a Subcontractor, of any Tier, on the Site or on other properties related to performance of the Work or the preparation for performance of the Work;
- .3 the payment or nonpayment of any Subcontractor, of any Tier, for the Work performed, except where such nonpayment is the result of a breach by County of its payment obligations under the Contract Documents;
- .4 the existence or dispersal of any Hazardous Substances or Mold on the Site as a result of the failure of Contractor or a Subcontractor, of any Tier, to comply with its obligations under the Contract Documents;
- .5 the violation by Contractor or a Subcontractor, of any Tier, of an obligation under Section 3.17, above, involving infringement of an Intellectual Property Right; or
- .6 the violation by Contractor or a Subcontractor, of any Tier, of any Applicable Law, including, without limitation, the violation of any requirement of the State of California General Permit for Storm Water Discharges Associated with Construction Activity and subsequent amendments or orders for construction activities as applicable thereto (including, without limitation, the requirements of a Storm Water Pollution Prevention Plan) or the violation of any applicable requirement of any local or regional Air Quality Management District (AQMD) (including, without limitation, a violation of any of the requirements set forth in the County MOU with AQMD dated January 6, 2004 Agenda Item 3.1 (for projects in the Coachella Valley) or AQMD Rule 403 (for projects west of the Coachella Valley));

PROVIDED, HOWEVER, that nothing contained herein shall be construed as obligating Contractor to indemnify an Indemnitee for Losses resulting from the sole negligence, active negligence or willful misconduct of such Indemnitee or its agents, servants or independent contractors who are directly responsible to such Indemnitee or from a defect in design furnished by such Indemnitee, where such sole negligence, active negligence, willful misconduct or design defect has been determined by agreement of Contractor and that Indemnitee or has been adjudged by the final and binding findings of a court or arbitrator of competent jurisdiction. In instances where the active negligence or willful misconduct of an Indemnitee or its agents, servants or independent contractors who are directly responsible to such Indemnitee or a defect in a design furnished by such an Indemnitee accounts for only a portion or percentage of the Loss involved, the obligation of Contractor will be for that portion or percentage of the Loss not due to such active negligence, willful misconduct or design defect.

3.18.2 Indemnification of Adjacent Property Owners. In the event Contractor enters into an agreement with the owners of any adjacent property to enter upon such property for the purpose of performing the Work or other activities incidental to the Work, Contractor shall fully indemnify, defend and hold harmless any person or entity which owns or has any interest in such adjacent property against any Loss resulting from the acts or omissions of the Contractor or its Subcontractors. The form and content of such indemnification agreement shall be approved by County prior to commencement of any Work on or around such property.

3.18.3 Insurance and Employment Benefits. The indemnification, defense and hold harmless obligations of Contractor under this Section 3.18, as well as any such obligations stated elsewhere in the Contract Documents: (1) shall not be limited by the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which any Indemnitee, Contractor or any Subcontractor carries or is required to carry under the terms of the Contract Documents; (2) is independent of and in addition to the Indemnitees' rights under the insurance to be provided by an Indemnitee, Contractor or any Subcontractor; and (3) shall not be limited, in the event of a claim

against an Indemnitee by an employee of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or Subcontractor under any worker's compensation act, disability benefit act or other employee benefit program.

3.18.4 Subcontractor Indemnity Agreements. Contractor agrees to obtain or cause to be obtained executed defense and indemnity agreements with provisions identical to those set forth in this Section 3.18 from each and every Subcontractor, of every Tier.

3.18.5 Implied Indemnity Rights. Notwithstanding anything stated in this Section 3.18 or elsewhere in the Contract Documents to the contrary, an Indemnitee's right to seek equitable indemnity and contribution from Contractor is in no way diminished, limited or precluded by any agreement by Contractor to provide express contractual indemnity to such Indemnitee. Contractor's obligations under this Section 3.18 shall be deemed to completely eliminate and preclude any right by Contractor to seek contractual or equitable indemnity or contribution from any Indemnitee for any Loss covered by the Contractor's express indemnification obligations under this Section 3.18.

3.18.6 Obligation to Defend. The Contractor's obligation to defend under this Section 3.18 includes, without limitation, the obligation to immediately reimburse an Indemnitee for any attorney's fees, court costs (statutory and non-statutory), arbitration and mediation expenses, professional, expert and consultant fees, investigative costs, postage costs, document copying costs, telecopy costs and any and all other costs and expenses associated with defense of such Indemnitee as and when incurred by any Indemnitee in defense of a claim by any third person or entity as a result of Contractor's failure or refusal to comply with its immediate defense obligation to such Indemnitee. Nothing stated in this Section 3.18 or elsewhere in the Contract Documents shall be interpreted as providing or implying that the obligation of Contractor to defend an Indemnitee against an alleged Loss that is within the scope of the Contractor's indemnification obligation under this Section 3.18 or under any other provision of the Contract Documents is to any extent released, excused, limited or relieved by a finding, determination, award or judgment by a court or arbitrator that the alleged Loss was due to circumstances not within the scope of such indemnification obligation.

3.18.7 Enforcement. The Indemnitees shall be entitled to recover their attorneys' fees, costs and expert and consultant costs in pursuing or enforcing a right to defense and/or indemnification under this Section 3.18.

3.19 LABOR, WAGES, PAYROLL RECORDS

3.19.1 Public Work. This Work is a "public work" as defined in Labor Code §1720 and must be performed in accordance with the requirements of Labor Code §§1720 to 1850 and Title 8 California Code of Regulations §§16000 to 17270, which govern the payment of prevailing wage rates on public works projects.

3.19.2 Prevailing Wage Rates. Pursuant to the provisions of Article 2 (commencing at §1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime Work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to execute the Work from the Director of the Department of Industrial Relations. These rates are on file with County and copies will be made available to any interested party on request. Contractor shall post a copy of such wage rates at the Site. The adoption of such wage rates is not a representation that labor can be obtained at these rates. It is the responsibility of Contractor to inform itself as to the local labor conditions. Holiday and overtime Work, when permitted by Applicable Laws, shall be paid for at a rate of at least one and one-half times the adopted rate of per diem wages, unless otherwise specified. Holidays shall be defined in the collective bargaining agreement applicable to each particular craft, classification or type of worker employed.

3.19.3 Unclassified Workers. Any worker employed to perform the Work not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director of the Department of Industrial Relations shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the Work to be performed by him/her, and such minimum wage rate shall be retroactive to time of initial employment of such person on the Project in such classification.

3.19.4 Per Diem Wages. Contractor shall pay or shall cause to be paid each worker engaged in the Work not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between Contractor or any of the Subcontractors and such workers. Pursuant to California Labor Code §1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay.

3.19.5 Applicable Laws. Contractor represents and warrants that the Contractor's Bid and the Contract Price includes funds sufficient to allow Contractor to comply with all Applicable Laws governing the labor or services to be provided. Contractor shall defend and indemnify the Indemnitees in accordance with Section 3.18, above, for any violation of any Applicable Law, including but not limited to California Labor Code §2810, and agrees to pay all assessments, including wages and penalties, made against County in relation to such violations.

3.19.6 Posting at Site. Contractor shall post at appropriate conspicuous points on the Site the prevailing wage rates of the Department of Industrial Relations in accordance with 8 California Code of Regulations 16100(b).

3.19.7 Worker Hours. As provided in Article 3 (commencing at §1810), Chapter 1, Part 7, Division 2 of the California Labor Code, eight (8) hours of labor shall constitute a legal day's work. The standard work day of any worker employed at any time by Contractor or any of the Subcontractors performing the Work, or any part of the Work, shall, except as hereinafter provided, be limited and restricted by Contractor to eight (8) hours per day, between the hours of 6:00 A.M. and 6:00 P.M. (unless otherwise required by Applicable Laws), plus one-half hour unpaid lunch approximately midway through the shift, provided that Contractor or any of the Subcontractors may establish a four day/ten-hour schedule consistent with Applicable Laws pertaining to payment of prevailing wages and the provisions any applicable collective bargaining agreement. A regular-work week shall constitute forty (40) hours during any one week. Notwithstanding the provisions hereinabove set forth, the parties hereto may agree to changes in the work day or the work week as permitted by Applicable Laws, and Contractor and all Subcontractors must pay the appropriate prevailing wage rate for those hours and days worked.

3.19.8 Overtime. Overtime work performed by employees of Contractor or any of the Subcontractors shall be compensated according to the applicable general prevailing rate established by the Department of Industrial Relations for holiday and overtime work for each craft, classification or type of worker in the locality in which the Work is to be performed.

3.19.9 Payroll Records. It shall be the sole responsibility of Contractor to ensure compliance with the provisions of Applicable Laws and the Contract Documents relating to maintenance and submission of payroll records. Pursuant to the provisions of California Labor Code §1776, Contractor shall keep, and shall cause each Subcontractor performing any portion of the Work to keep, accurate certified payroll records, showing the name, address, social security number, worker classification and straight-time and overtime hours worked each Day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by Contractor in connection with the Work. Certified payroll records must be in the payroll reporting format prescribed by the Division of Labor Standards Enforcement. If there is no work by Contractor or a Subcontractor in a given week, Contractor must keep and submit a certified "Nonperformance" payroll record, indicating "no work" for that week. Contractor shall submit all certified payroll records to County in complete, unredacted form with an original signature on the Statement of Compliance, along with, and as a condition to, its Applications for Payment. Additionally, payroll records shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

.1 a certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request;

.2 a certified copy of all such payroll records shall be made available for inspection or furnished upon request to County, the Division of Labor Standards Enforcement and/or the Division of Apprenticeship Standards of the Department of Industrial Relations or such other person or entity as designated by County;

.3 a certified copy of all such payroll records shall be made available upon request by the public for inspection or the copying thereof, provided that (1) such request is made by the public through either County, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the Department of Industrial Relations, (2) such requested payroll records have not previously been provided pursuant to Subparagraph 3.19.9.2,

above, then the requesting individual or entity shall, prior to being provided the records, reimburse the costs of preparation by Contractor, the Subcontractors and the entity through which the request was made, and (3) the public shall not be given access to records at the principal office of Contractor;

.4 Contractor and each Subcontractor shall within ten (10) Days after receipt of a written request file a certified copy of such payroll records with the person or entity that requested the records;

.5 Contractor shall provide, and shall cause each Subcontractor to provide, payroll records as defined in Title 8 California Code of Regulations §16000 to County within ten (10) Days after receipt of written request, at no cost to County;

.6 any copy of such payroll records made available for inspection by, and copies furnished to, the public shall be redacted in a manner so as to prevent disclosure of an individual's name, address, and social security number, except that any copy made available for inspection by, and copies furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Section 175a) shall be marked or redacted only to prevent disclosure of an individual's name and social security number, and in either event, the name and address of Contractor or the Subcontractor performing the Work shall not be so obliterated; and

.7 any copy made available to an agency included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records;

.8 Contractor shall inform County concurrently with the submission of its initial Application for Payment, of the location of such payroll records, including the street address, city and county, and thereafter shall, within five (5) working days, provide a notice of any change of location and address of such payroll records.

3.19.10 Apprentices. Contractor acknowledges that, even if performance of the Work involves a dollar amount greater than or a number of working days greater than that specified in California Labor Code §1777.5, it shall be the sole responsibility of Contractor, for all apprentice occupations, to ensure compliance with California Labor Code §1777.5, including, without limitation, the following provisions:

.1 Apprentices of any crafts or trades may be employed and, when required by California Labor Code §1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the California Labor Code.

.2 Every such apprentice shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

.3 Only apprentices, as defined in California Labor Code §3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at §3070), Division 3 of the California Labor Code, are eligible to be employed at the apprentice wage rate on Public Works. The employment and training of each apprentice shall be in accordance with either: (1) the apprenticeship standards and apprentice agreements under which he or she is training, or (2) the rules and regulations of the California Apprenticeship Council.

.4 Contractor and any of the Subcontractors employing workers in any apprenticeable craft or trade in performing any of the Work shall apply to the applicable joint apprenticeship committee for a certificate approving Contractor or the Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

.5 Prior to commencing the Work, Contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the Site of the Work. The information submitted shall include an estimate of journeyman hours to be performed under the Construction Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to County if requested by County.

.6 The ratio of the Work performed by apprentices to journeymen employed in a particular craft or trade on the Work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates, where Contractor or the Subcontractor agrees to be bound by those standards, but, except as otherwise provided in this Paragraph, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of journeyman work. Apprentices may comprise up to thirty percent (30%) of the work force of each particular craft, classification or type of worker employed, unless the applicable joint apprenticeship committee establishes a lower percentage. To the extent possible, fifty percent (50%) of the apprentice work force shall consist of first-year apprentices.

.7 The interpretation and enforcement of California Labor Code §1777.5 shall be in accordance with the rules and procedures of the California Apprenticeship Council.

.8 Contractor and all the Subcontractors shall comply with California Labor Code §1777.6, which forbids certain discriminatory practices in the employment of apprentices.

.9 Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work, paying special attention to California Labor Code §§1777.5, 1777.6, and 1777.7 and Title 8, California Code of Regulations, §§200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California.

3.19.11 Pre-Construction Meetings, Interviews. Contractor shall attend any pre-construction meetings held by County to discuss labor requirements. Contractor and the Subcontractors shall allow County, County Consultants and the Department of Industrial Relations, and designated representatives of each, to conduct, at their discretion, interviews of workers at the Site during working hours.

3.19.12 Penalties for Violations.

.1 Prevailing Wage Violations. Pursuant to California Labor Code §1775, Contractor and any of the Subcontractors shall, as a penalty, pay an amount not to exceed Two Hundred Dollars (\$200) for each Day, or portion thereof, for each worker paid less than the prevailing rates, determined by the Director of the Department of Industrial Relations, for the trade or craft in which such worker is employed by Contractor or, except as provided by said §1775, by any of the Subcontractors, of any Tier, for performance of the Work. The amount of this penalty shall be determined by the Labor Commissioner and shall be based on consideration of both: (1) whether the failure of Contractor or the Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, whether the error was promptly and voluntarily corrected upon being brought to the attention of Contractor or the Subcontractor; and (2) whether Contractor or the Subcontractor has a prior record of failing to meet its prevailing wage obligations. The difference between the amount owed to each worker pursuant to such prevailing wage rates, and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

.2 Working Hour Violations. Pursuant to Labor Code §1813, Contractor shall pay a penalty of Twenty-Five Dollars (\$25) per worker employed in the performance of the Work by Contractor or by any of the Subcontractors for each Day during which such worker is required or permitted to work more than eight (8) hours in any Day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at §1810), Chapter 1, Part 7, Division 2 of the California Labor Code.

.3 Payroll Record Violations. Pursuant to California Labor Code §1776, Contractor shall in the event of a failure to comply within ten (10) Days with any written notice requesting the records enumerated in subdivision (a) of said §1776, pay a penalty of One Hundred Dollars (\$100) for each Day, or portion thereof, for each worker, until Contractor has strictly complied with such request. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

.4 Apprenticeship Violations. Pursuant to California Labor Code §1777.7, if Contractor or the Subcontractor is determined by the Chief of the Division of Apprenticeship Standards (the "Chief") to have knowingly committed a first-time violation of California Labor Code §1777.5, Contractor or the Subcontractor shall pay, as a civil penalty, an amount not exceeding One Hundred Dollars (\$100) for each full Day of noncompliance, provided that the

amount of this penalty may be reduced by the Chief if the penalty would be disproportionate to the severity of the violation. In lieu of this penalty, the Chief may, for a first-time violation and with the concurrence of the joint apprenticeship committee, order Contractor or the Subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance. If such violation by Contractor or the Subcontractor is a second or subsequent violation committed within a three (3) year period from a previous violation of §1777.5, Contractor or the Subcontractor shall pay, as a civil penalty, to County the sum of not more than Three Hundred Dollars (\$300) for each full Day of noncompliance. County shall withhold the amount of the civil penalty from contract progress payments then due or to become due. In addition, if Contractor or the Subcontractor is determined to have knowingly committed a serious violation of any provision of §1777.5, the Chief may deny to Contractor or the Subcontractor, and to its responsible officers, the right to bid on or be awarded a contract to perform work as a subcontractor on any subsequent project for County for a period of up to one (1) year for the first violation and for a period of up to three (3) years for a second or subsequent violation.

3.19.13 Subcontractor Provisions. Contractor shall include, and shall require the Subcontractors to include, contractual provisions in all contracts they enter into for the performance of the Work requiring compliance with the provisions of this Section 3.19 at no additional cost.

3.19.14 Condition of Payment. Compliance by Contractor with the requirements of this Section 3.19 and each of its Paragraphs shall be a condition to Contractor's right to payment under its Applications for Payment. Without limitation to the foregoing, payments to Contractor shall not be made when payroll records are delinquent or inadequate.

3.20 LABOR CODE §2810

3.20.1 Application. The provisions of this Section 3.20 apply only if the Contractor has not executed a collective bargaining agreement covering the workers who will be employed to perform the Work.

3.20.2 Declaration by Contractor. If a Declaration of Sufficiency of Funds has not been submitted by Contractor as a Post-Award Submittal, then it must be submitted prior to Award. In executing the Construction Contract, Contractor warrants and represents that all of the statements contained in its Declaration of Sufficiency of Funds remain true and correct as of the date of execution of the Construction Contract and may be relied upon by County in determining whether there appears to be sufficient funds in the Contractor's Bid to allow the Contractor to comply with all Applicable Laws governing the labor or services to be provided for the performance of the Work. The truth and accuracy of the statements contained in said Declaration and in this Paragraph 3.20.2 constitute a material part of the Contractor's consideration for, and a material inducement to the County's entering into, the Construction Contract.

3.20.3 Continuing Duty. To the extent that any of the information provided in the Declaration of Sufficiency of Funds submitted by Contractor relating to numbers of workers or independent contractors that will be employed or utilized for performance of the Work was or is based upon a best estimate, rather than actual figures or information, then the Contractor assumes the continuing duty to the County to ascertain the actual figures and information requested in the Declaration of Sufficiency of Funds and to provide such actual figures and information to the County in the form of a revised and updated Declaration of Sufficiency of Funds once the actual figures and information become known.

3.21 URBAN RUNOFF AND STORM WATER COMPLIANCE

3.21.1 Contractor's Responsibility. If and to the extent storm water permitting, control, mitigation or discharge control is required by Applicable Laws, the Contractor shall: (1) prior to starting any Work at the Site, sign and implement the Storm Water Management Plans or Storm Water Pollution Prevention Plans as previously prepared by the County's Consultant for civil engineering or by others; (2) take all necessary steps to monitor, report, enforce and otherwise implement and comply with the requirements of the Storm Water Permit, Storm Water Management Plans and Storm Water Pollution Prevention Plans and all Applicable Laws pertaining to the elimination or mitigation of storm water pollutant discharge to separate storm sewer systems or other watercourses, including without limitation, applicable requirements of the State Water Resources Control Board, Santa Ana, San Diego, and/or Colorado Region Water Quality Control Boards and municipal storm water management programs; (3) adhere to and implement the Special Provisions for Urban Runoff and Water Pollution Control set forth in the Specifications;

and (4) ensure that the Work is constructed in conformance with those post-construction best management practices (BMPs) identified within the project-specific Water Quality Management Plan (WQMP).

3.21.2 Inspections, Reports. Contractor shall immediately notify the person identified to Contractor as the County's "project manager" for the Project of all inspections by Government Authorities (including, but not limited to, any regional board staff) and, if practicable, arrange for participation by such Governmental Authorities in any other pertinent inspections conducted at the Site. Contractor shall provide to County copies of all reports and monitoring information related to the matters covered by this Section 3.21.

3.21.3 Violations. The Contractor recognizes and understands that failure to comply with the requirements of any applicable storm water-related permit issued by the State of California of the United States pursuant to the Clean Water Act (Title 33 U.S.C. §§ 1251 et seq) and/or the Porter Cologne Water Quality Control Act (California Water Code §§13000 et seq.) is a violation of Applicable Laws. Contractor shall be responsible for all Losses and for any liability (including, without limitation, fines, penalties and other administrative liabilities and costs) imposed by Applicable Laws as a result of the Contractor's failure to comply with Applicable Laws, including, without limitation, the requirements of this Section 3.21.

3.21.4 Condition of Payment. Compliance by the Contractor with the requirements of this Section 3.21 shall be a condition to the Contractor's right to payment under its Applications for Payment.

3.21.5 Costs of Compliance. The Contractor represents and warrants that it has included in its Bid all costs of compliance with the requirements of this Section 3.21.

3.22 SOLID WASTE MANAGEMENT

Contractor shall comply with all provisions of Applicable Laws (including, without limitation, the requirements of the California Public Resources Code, rules and regulations of the California Integrated Waste Management Board and provisions of any Site-specific plans adopted by County) that are applicable to the activities of contractors performing construction or related activities on the Site. Compliance by Contractor with the requirements of this Section 3.22 shall be a condition to Contractor's right to payment under its Applications for Payment.

3.23 CEQA COMPLIANCE

No Work that is subject to California Environmental Quality Act (CEQA) shall proceed by Contractor until Contract Documents satisfying the CEQA process are reviewed and approved by the County. Contractor shall comply with all applicable CEQA requirements. If there is a federal nexus (e.g. a source of federal funding) to the Project, compliance by Contractor with the National Environmental Policy Act (NEPA) will be required in addition to and in conjunction with compliance with requirements of CEQA. The Contractor shall comply with the conditions identified on the Plans and Specifications for compliance with the California Environmental Quality Act, including, without limitation, all requirements pertaining to Mitigation, Monitoring, and Reporting Program (MMRP).

3.24 AQMD COMPLIANCE

Contractor is responsible for full and complete 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). Any fines imposed by AQMD on the County, as well as any other Loss to County, as a result of non-compliance by Contractor with the applicable provisions of the foregoing requirements are the responsibility of Contractor and upon request by County will be paid to County by Contractor or may be withheld by County from amounts due to Contractor under its Applications for Payment.

ARTICLE 4 CONSTRUCTION ADMINISTRATION

4.1 ARCHITECT

4.1.1 Scope of Authority. The Architect shall have the authority to act on behalf of County only as expressly provided in the Contract Documents and subject to such limitations on authority as set forth in Paragraph 4.1.2, below. As clarification of the foregoing, if the Contract Documents provide that the Architect has the right to approve of, consent to or direct that Contractor take or forbear from taking an action, such authority shall be limited to issuing such approval, consent or direction and shall not include, or be interpreted to include, authority to bind County with respect to any of the matters set forth in Paragraph 4.1.2, below. If Contractor's compliance with such approval, consent or direction of the Architect would involve or require authorization by County within the scope of the matters set forth in Paragraph 4.1.2, below, Contractor has the obligation, in addition to complying with the Architect's approval, consent or direction, to take steps in accordance with the Contract Documents to obtain such authorization of County as may be required and failing to do so shall not have any right to recourse or recovery from County on account of Contractor's action taken or Work performed in response to such approval, consent or direction by Architect.

4.1.2 Limitations on Authority. Without limitation to the other limitations on the Architect's authority expressed or implied under Paragraph 4.1.1, above, and notwithstanding anything else set forth in the Contract Documents to the contrary, Architect does not have authority to: (1) obligate or commit County to any payment of money; (2) obligate County to any adjustment to the Contract Price or Contract Time; (3) relieve Contractor of any of its obligations under the Contract Documents; (4) approve or order any Work involving Delay or Extra Work; or (5) perform any act, make any decision or give any direction or approval that is described in these General Conditions as an act, decision, direction or approval that is to be performed, made or given by any person or entity other than Architect.

4.1.3 Work Stoppage. Architect's authority includes, without limitation, the authority to stop the Work whenever such stoppage may be necessary, in Architect's opinion, for the proper execution of the Work. Any Work that is stopped or disapproved by order of Architect shall be resumed if and when County so directs in writing, with or without the concurrence of the Architect.

4.1.4 Replacement. County may, in its sole discretion, substitute another person or entity, or add persons or entities, to perform the functions of Architect or to exercise some or all of the authority of Architect provided for in the Contract Documents.

4.1.5 County Rights. All rights and authority conferred upon Architect under the Contract Documents constitute rights that County may, in its sole and absolute discretion, exercise in writing on its own behalf, irrespective of whether the County has ordered the removal, replacement or a change in the authority of the Architect.

4.2 ADMINISTRATION OF THE CONSTRUCTION CONTRACT

4.2.1 Observations of the Work. Architect will visit the Site as appropriate to the stage of the Work to observe the Work in progress. Observations shall be for the purpose of ascertaining the progress of the Work and that the character, scope, quality and detail of construction (including workmanship and materials) comply with the Contract Documents, the Architect's directives, approved Submittals and clarifications issued by Architect. Observations shall be separate from any inspections which may be provided by others.

4.2.2 Means, Methods. Construction means, methods, techniques, sequences, procedures and safety precautions and programs in connection with the Work are solely the responsibility of Contractor. Neither County nor Architect: (1) has control over or charge of, nor are they responsible for, Contractors or any Subcontractor's construction means, methods, techniques, sequences, procedures, safety precautions or programs in connection with the Work, all of which are, as between Contractor and County, solely Contractor's responsibility; (2) is responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents; or (3) has control over, charge of, or responsibility for acts or omissions of Contractor, the Subcontractors or their agents or employees, or of any other persons performing portions of the Work.

4.2.3 Communications by Contractor. County shall be provided by Contractor with copies of all communications from Contractor or the Subcontractors to Separate Contractors or the Architect. Contractor shall not rely on oral or other non-written communications.

4.2.4 Review of Applications for Payment. If requested by County, Architect will review and certify all Applications for Payment by Contractor, including Applications for Payment requesting Progress Payments and Final Payment. In such cases, if the Architect and County do not concur in respect to the amount to be paid to Contractor, County's determination of the amount due will prevail.

4.2.5 Rejection of the Work. Architect will have authority to reject Work that does not conform to the Contract Documents and to require additional inspection or testing, in accordance with Article 10, below, whether or not such Work is fabricated, installed or completed. Whenever Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, Architect will have authority to require additional inspection or testing of the Work in accordance with Article 10, below, whether or not such Work is fabricated, installed or completed. Neither Architect's authority to act under this Paragraph 4.2.5 nor a decision made in good faith either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of Architect to Contractor, the Subcontractors, their agents or employees, or other persons performing any of the Work. County shall have the right, notwithstanding a recommendation by the Architect pursuant to this Paragraph 4.2.5 to reject a portion of the Work, to elect to accept the Work rejected by Architect and to direct in writing the manner in which the Work is to be performed and Contractor shall comply therewith.

4.2.6 Review of Submittals. Architect and such other County Consultants as Architect or County determines appropriate will review, approve or take other appropriate action upon the Contractor's Submittals. Such review, approval and other action taken in regard to a Submittal is for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents and is not conducted for the purpose of determining the technical accuracy and completeness of the Submittal, checking details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the sole responsibility of Contractor. Actions by Architect and County Consultants in connection with review of a Submittal by Contractor will be taken with such promptness as to cause no unreasonable Delay in the Work of Contractor or in the activities of the Separate Contractors or County, while allowing sufficient time in their judgments to permit adequate review. Whether or not County has identified a particular Submittal for review by Architect or a County Consultant, Contractor shall in all cases submit Submittals sufficiently in advance to allow time to permit adequate review by Architect and other County Consultants. Neither Architect's nor any County Consultant's review of a Submittal shall: (1) relieve Contractor of its obligations under Section 3.11, above; (2) constitute approval of safety precautions or, unless otherwise specifically stated in writing by the Architect or County Consultant at the time such Submittal is returned to Contractor; (3) be construed as an approval of any construction means, methods, techniques, sequences or procedures; and (4) if it involves review or approval of a specific item, be construed as indicating approval of an assembly of which such item is a component.

4.2.7 Changes. After consultation with the Architect, County will prepare the Change Orders, Unilateral Change Orders and Construction Change Directives for execution and take appropriate action thereon in accordance with Article 7, below.

4.3 CLAIMS

4.3.1 Submission of Claims. All Claims by Contractor shall be submitted in accordance with the procedures set forth in this Section 4.3.

4.3.2 Arising of Claim.

.1 Changes. A Claim by Contractor involving a Contract Adjustment due to a Compensable Change or Deleted Work arises upon issuance of a decision denying, in whole or in part, Contractor's Change Order Request. Such Claim shall be prepared and submitted in accordance with the requirements of this Section 4.3, including, without limitation, Paragraphs 4.3.3 through 4.3.5, below.

.2 Other Claims. Claims by Contractor other than those described in Subparagraph 4.3.2.1, above, arise at the time that County receives written notice by Contractor of Contractor's intent to file the Claim. Such

notice of intent shall be given no later than five (5) Days after the Discovery Date relative to such circumstances (even if Contractor has not yet experienced a Loss or Delay due to such circumstances) and shall state the event or condition giving rise to the Claim and its probable effect, if any, upon the Contract Price and Contract Time. **FAILURE BY CONTRACTOR TO SUBMIT A NOTICE OF INTENT TO FILE CLAIM IN ACCORDANCE WITH THIS SUBPARAGRAPH 4.3.2.2 SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.6 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO FURTHER RECOURSE OR RECOVERY UPON SUCH CLAIM.**

4.3.3 Content of Claims. A Claim must include the following:

- .1 a statement that it is a Claim and a request for a decision on the Claim;
- .2 a detailed description of the act, error, omission, unforeseen condition, event or other circumstance giving rise to the Claim;
- .3 supporting documentation as follows: (1) if the Claim involves a Contract Adjustment due to Compensable Change or Deleted Work, documentation demonstrating that a complete Notice of Change and Change Order Request were timely and properly submitted as required by Article 7, below; (2) if the Claim involves an adjustment to the Contract Time, documentation demonstrating that a complete Notice of Delay and Request for Extension were timely and properly submitted as required by Article 7 and Article 8, below; and (3) if the Claim does not involve a Contract Adjustment on the basis of Compensable Change or Deleted Work, documentation demonstrating that a notice of intent to file the Claim was timely and properly submitted as required by Subparagraph 4.3.2.2, above;
- .4 a detailed justification for any remedy or relief sought by the Claim, including, without limitation, all of the following: (1) a detailed cost breakdown in the form required for submittal of Change Order Requests, which complies with the prohibition on "total cost" calculations set forth in Paragraph 7.7.15, below; and (2) job cost records substantiating the actual costs that have been incurred; and
- .5 a written certification, signed by a responsible managing officer or principal of Contractor's organization who has the authority to sign contracts on behalf of Contractor and who has personally investigated the matters alleged in the Claim, in the following form:

"I hereby certify under penalty of perjury that I am a managing officer or principal of (Contractor) and that I have reviewed the Claim presented herewith on Contractor's behalf and/or on behalf of (Subcontractor(s)) and that the following statements are, to the best of my knowledge after diligent inquiry into the circumstances of such Claim, true and correct:

- (i) the facts alleged in or that form the basis for the Claim are true and accurate;
- (ii) I do not know of any facts or circumstances, not alleged in the Claim, that by reason of their not being alleged render any fact or statement alleged in the Claim materially misleading;
- (iii) I have, with respect to any request for money or damages alleged in or that forms the basis for the Claim, reviewed the job cost records (including those maintained by Contractor and by any Subcontractor, of any Tier, that is asserting all or any portion of the Claim) and confirmed with reasonable certainty that the losses or damages alleged to have been suffered by Contractor and/or such Subcontractor were in fact suffered in the amounts and for the reasons alleged in the Claim;

(iv) I have, with respect to any request for extension of time or claim of delay, disruption, hindrance or interference alleged in or that forms the basis for the Claim, reviewed the job schedules (including those maintained by Contractor and by any Subcontractor, of any Tier, that is asserting all or any portion of the Claim) and confirmed that the delays or disruption alleged to have been suffered by Contractor and/or such Subcontractor were in fact experienced for the durations, in the manner, and with the consequent effects on the time and/or sequence of performance of the Work, as alleged in the Claim; and,

(v) Contractor has not received payment from County for, nor has Contractor previously released County from, any portion of the Claim.

Signature: _____

Name: _____

Title: _____

Company: _____

Date: _____

4.3.4 Noncompliance. Failure by Contractor to comply with Paragraph 4.3.3, above, shall give County the right, without obligation, to deny the Claim or return the Claim without any response.

4.3.5 Submission of Claims.

.1 Time for Filing. All Claims and supporting documentation and certifications required to be submitted by Contractor must be submitted to the County within thirty (30) Days after the Claim arises (as "arises" is defined in Paragraph 4.3.2, above). No Claims by Contractor are permitted after Final Payment.

.2 Condition Precedent. Contractor's strict compliance with the requirements of this Section 4.3 as to a Claim shall be considered a condition precedent to Contractor's right to initiate or seek determination of its rights in any legal proceedings with respect to such Claim.

4.3.6 Response to Claims by Contractor.

.1 Claims under \$50,000. Claims by Contractor that are less than Fifty Thousand Dollars (\$50,000) shall be responded to by County by issuance of a Good Faith Determination of the Claim in writing within forty-five (45) Days of receipt of the Claim, unless County requests additional information or documentation of the Claim within thirty (30) Days of receipt of the Claim, in which case County shall respond to the Claim after receipt of the further information or documentation by issuing its Good Faith Determination of the Claim within the longer of either (1) fifteen (15) Days, or (2) the period of time taken by Contractor in producing the additional information or documentation.

.2 Claims over \$50,000. Claims by Contractor that are over Fifty Thousand Dollars (\$50,000) shall be responded to by County by issuance of a Good Faith Determination of the Claim in writing within sixty (60) Days of receipt of the Claim, unless County requests additional information or documentation of the Claim within thirty (30) Days of receipt of the Claim, in which case County shall respond to the Claim after receipt of the further information or documentation by issuing its Good Faith Determination within the longer of either (1) thirty (30) Days, or (2) the period of time taken by Contractor in producing the additional information or documentation.

4.3.7 Meet and Confer. If Contractor disputes County's Good Faith Determination of a Claim by Contractor, or if County fails to respond within the prescribed time set forth in Paragraph 4.3.6, above, Contractor may

so notify County, in writing, within fifteen (15) Days of Contractor's receipt of County's Good Faith Determination, or within fifteen (15) Days of County's response due date in the event of a failure to respond, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand, County shall schedule a meet and confer conference within thirty (30) Days of such demand for discussion of settlement of the dispute. If either County or Contractor determines that the meet and confer process has not been successful, it shall have the right to declare the meet and confer process closed by written notice to the other party so stating.

4.3.8 Claims Based on Differing Site Conditions.

.1 Contractor Responsibility. Save and except as hereinafter provided in this Paragraph 4.3.8 for Contract Adjustments due to Differing Site Conditions, Contractor agrees at Contractor's Own Expense to assume the risk and costs of Extra Work and Delay due to concealed or unknown conditions, surface or subsurface, at the Site or in Existing Improvements.

.2 Differing Site Conditions. Differing Site Conditions are those conditions at the Site or in Existing Improvements and not otherwise reasonably ascertainable by Contractor in the performance of its obligations under the Contract Documents (including, without limitation, conditions not reasonably ascertainable by Contractor from documents or information described in Paragraph 3.2.1, above, that were provided or available to Contractor for its review prior to the Bid Closing Deadline) that constitute: (1) hazardous materials that constitute hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of Applicable Laws; (2) subsurface or concealed conditions at the Site or concealed conditions in Existing Improvements which differ materially from those indicated by the Contract Documents or other information that was either reviewed by Contractor or that Contractor was given the opportunity to review prior to the Bid Closing Deadline; or (3) unknown physical conditions at the Site or concealed conditions in Existing Improvements of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

.3 Notice of Change. If Contractor encounters conditions it believes constitute Differing Site Conditions, then Contractor shall, before such conditions are disturbed, give Notice of Change as required by Paragraph 7.6.1, below, stating, without limitation, a detailed description and precise location of the conditions encountered.

.4 Investigation by County. Upon receipt of notice from Contractor as required by Subparagraph 4.3.8.3, above, County shall promptly investigate Contractor's report of Differing Site Conditions.

.5 Change Order Request. If Contractor intends to seek a Contract Adjustment based upon Differing Site Conditions, it shall submit a complete and timely Change Order Request in accordance with Paragraph 7.6.2, below, setting forth its request for a Contract Adjustment.

.6 Contract Adjustments. If, following Contractor's compliance with its obligations under this Paragraph 4.3.8, County finds that Differing Site Conditions exist, then, unless the Contractor's right to Contract Adjustment has been waived as pursuant to Paragraph 3.2.3, above, a Contract Adjustment shall be made for the resulting Compensable Change and Compensable Delay, in such amount and duration as County determines by issuance of a Good Faith Determination are reasonable and permitted by these General Conditions.

.7 WAIVER BY CONTRACTOR.

FAILURE BY CONTRACTOR TO STRICTLY COMPLY WITH THE REQUIREMENTS OF THIS PARAGRAPH 4.3.8 PERTAINING TO CONTRACT ADJUSTMENT BASED ON A CLAIM FOR DIFFERING SITE CONDITIONS SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.6 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO FURTHER RECOURSE OR RECOVERY UPON SUCH CLAIM.

.8 Final Completion. No claim by Contractor for additional compensation for Differing Site Conditions shall be allowed if asserted after Final Payment.

4.3.9 Continuous Work. Contractor shall, notwithstanding the existence of a Claim by Contractor that is disputed by County, maintain continuous performance, without interruption, suspension or slowing, of the Work and its

other obligations (1) pending issuance by County of a Good Faith Determination of the Claim and (2) thereafter in compliance with the terms of such Good Faith Determination.

4.4 ATTORNEY'S FEES

If any legal action, arbitration or other legal proceeding is brought in connection with or related to the interpretation, performance or enforcement of the Contract Documents or the performance or nonperformance of the Work, including, but not limited to, an action to rescind the Construction Contract, the prevailing party therein shall be entitled to recover from the other party the prevailing party's actual costs, expenses and attorneys' fees at arbitration, mediation, trial and on appeal. The determination of the "prevailing party" shall be based upon the party who prevails upon the matters actually litigated or arbitrated and shall not be determined solely based on the party receiving a net monetary recovery.

4.5 NOTICE OF THIRD-PARTY CLAIMS

County shall provide notification to Contractor within a reasonable time after receipt of any third-party claim relating to the Construction Contract. County shall be entitled to recover from Contractor its reasonable costs of providing such notification.

4.6 WAIVERS OF RIGHTS BY CONTRACTOR

COUNTY AND CONTRACTOR ACKNOWLEDGE THAT IT IS IN THE INTERESTS OF BOTH PARTIES THAT CHANGES, DELAYS AND CLAIMS BE IDENTIFIED, QUANTIFIED, EVALUATED AND FINALLY RESOLVED PROMPTLY, CONTEMPORANEOUSLY WITH THE CIRCUMSTANCES FROM WHICH THEY ARISE, AND THAT THERE BE CERTAINTY WITH RESPECT TO THE FINALITY OF ANY RESOLUTION OF RELATED DISPUTES. ON THOSE PREMISES, AND IN FURTHER RECOGNITION OF THE FACT THAT IT WOULD BE EXTREMELY DIFFICULT OR IMPOSSIBLE TO QUANTIFY, DEMONSTRATE OR PROVE THE HARM TO COUNTY IF ANY OF THE FOREGOING PREMISES IS NOT ACHIEVED DUE TO A FAILURE BY CONTRACTOR TO COMPLY WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS CONCERNING TIMELY NOTICE OR SUBMISSIONS OF NOTICES AND CLAIMS RELATING TO CHANGES, DELAY AND CONTRACT ADJUSTMENTS, COUNTY AND CONTRACTOR AGREE THAT FAILURE BY CONTRACTOR TO CONFORM TO SUCH REQUIREMENTS OF THE CONTRACT DOCUMENTS SHALL IN AND OF ITSELF CONSTITUTE SUFFICIENT CAUSE AND GROUNDS, WITHOUT THE NECESSITY OF COUNTY DEMONSTRATING ANY ACTUAL HARM OR PREJUDICE, FOR IMPOSING UPON CONTRACTOR A FULL AND UNCONDITIONAL WAIVER BY CONTRACTOR OF ITS RIGHT TO A CONTRACT ADJUSTMENT AND OF ITS RIGHTS AND RECOURSE FOR RECOVERY OF ANY RELATED LOSS BY ANY LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.

4.7 GOOD FAITH DETERMINATIONS

Wherever in the Contract Documents it is provided that the County may or shall make a determination or decision in the exercise of good faith (including, without limitation, provisions for a Good Faith Determination by County), 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 Contractor without Delay to Contractor's performance of the Work. However, unless the Contract Documents expressly provides otherwise, neither such good faith determination or decision nor Contractor's compliance therewith shall be interpreted as precluding the Contractor from exercising its rights to seek adjudication of its rights in the manner permitted by these General Conditions or Applicable Laws.

4.8 ESCROW BID DOCUMENTS

If the Bidding Documents obligate Contractor to submit Escrow Bid Documents, then submission by Contractor of its Escrow Bid Documents shall constitute a warranty and representation by Contractor that it has no other written documents or electronic files containing any information that Contractor was required to include, but failed to include, as part of its performing such obligation and Contractor agrees it shall have no right to submit for consideration by County, or offer into evidence in legal proceedings, in support of a request for Contract Adjustment or a Claim any such documentation or electronic files that Contractor so failed to include in its Escrow Bid Documents.

ARTICLE 5 SUBCONTRACTORS

5.1 SUBSTITUTION

5.1.1 **Substitutions Allowed.** There shall be no substitution of or addition to the Subcontractors except as permitted by Chapter 4 (commencing at §4100), Division 2, Part 1 of the California Public Contract Code (the "Act").

5.1.2 **Contractor's Own Expense.** Any increase in the cost or time of performance of the Work resulting from the replacement, substitution or addition of a Subcontractor shall be borne solely by Contractor at Contractor's Own Expense.

5.1.3 **Substantiation of Compliance.** At any time during performance of the Work it shall be the responsibility and burden of Contractor, if requested by County, to present clear and convincing evidence that Contractor is, and all times during the bidding and Award of the Construction Contract was, in full compliance with all of the applicable provisions of the Act. Failure by Contractor to present such evidence when requested shall be deemed a breach of this Section 5.1 and of the Act, thereby entitling County to exercise any or all of its rights and remedies under the Contract Document or Applicable Laws, including, without limitation, the right to cancel the Construction Contract or assess any penalties provided for by the Act.

5.1.4 **Splitting Prohibited.** Any attempt by Contractor to avoid compliance with the Act, such as, but not limited to, by splitting the work of subcontracts with Subcontractors into separate contracts or changes orders so as to not exceed the monetary threshold of the Act applicable to listing of Subcontractors, is strictly prohibited.

5.2 SUBCONTRACTUAL RELATIONS

5.2.1 **Written Agreements.** Contractor shall, by written agreement entered into between the Contractor and Subcontractors no later than twenty (20) Days after Award, require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents and to assume toward Contractor all the obligations and responsibilities which Contractor, by the Contract Documents, assumes toward County and the Architect. Each subcontract agreement shall preserve and protect the rights of County and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Contractor that Contractor, by the Contract Documents, has against County. Contractor shall require each first-Tier Subcontractor to enter into similar agreements with their sub-subcontractors. Copies of applicable portions of the Contract Documents shall be made available by Contractor to the first-Tier Subcontractors and each Subcontractor shall similarly make copies of such Contract Documents available to each Subcontractor of a lower-Tier with which it contracts. Without limitation to the foregoing, each contract that is entered into by a Subcontractor, of any Tier, shall, without limitation, require the Subcontractor:

- .1 to perform the Work in accordance with the terms of the Contract Documents;
- .2 to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward County by the Contract Documents;
- .3 to preserve and protect the rights of County under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights;
- .4 to waive all rights (including, without limitation, rights of subrogation) that the Subcontractor or its insurers may have against County and others required by the Contract Documents to be named as additional insureds, for Losses covered by insurance carried by Contractor or County, except for such rights as the Subcontractor may have to the proceeds of such insurance held by County or such other additional insured;
- .5 to afford County and entities and agencies designated by County the same rights and remedies afforded to them under the Contract Documents with respect to access to, and the right to audit and copy at

County's cost, all of the Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, memoranda and other records and documents relating to the Work and requiring the Subcontractor to preserve all such records and other items for a period of ten (10) years after Final Completion;

.6 to recognize the rights of the County under Section 5.3, below, including, without limitation, the County's right to (1) accept assignment of the Subcontractor's agreement, (2) accept assignment of Contractor's rights as obligee under a performance bond furnished by a first-Tier Subcontractor, (3) to retain the Subcontractor pursuant to the terms of its agreement with Contractor to complete the unperformed obligations under its agreement, and, (4) if requested by the County, to require that the Subcontractor execute a written agreement on terms acceptable to the County confirming that the Subcontractor is bound to the County under the terms of its agreement with Contractor;

.7 to submit applications for payment, requests for change orders and extensions of time and claims, and to comply with all other notice and submission requirements of the Contract Documents, sufficiently in advance to allow Contractor time to comply with its obligations under the Contract Documents;

.8 to purchase and maintain insurance in accordance with the requirements of the Contract Documents;

.9 to defend and indemnify the Indemnitees on the same terms as provided in Section 3.18, above;

.10 to comply with the nondiscrimination (Article 16, below) and prevailing wage (Section 3.19, above) provisions of these General Conditions;

.11 limiting the Subcontractor's right to additional compensation or extension of time due to Differing Site Conditions and Design Discrepancies in accordance with the provisions of Section 3.2, above;

.12 to provide for a right of termination for convenience by Contractor that limits the Subcontractor's right to compensation to an allocable share of the subcontract price that corresponds to the percentage of the Work properly performed by the Subcontractor, with no additional sum payable for any other Losses, including, without limitation, prospective damages, lost profits or consequential damages, of any kind; and

.13 to provide that time is of the essence to each of the Subcontractor's obligations.

5.2.2 Copies. Contractor shall, upon request by County made at any time, furnish to County true, complete, and executed copies of all contracts with the Subcontractors and amendments, modifications and change orders thereto. Progress payments shall not be made for items of the Work for which County has not received such documents following request therefor by County.

5.2.3 No Brokering. Contractor shall not permit any portion of the Work to be contracted to a firm acting as a broker, factor or other entity not actually performing a substantial portion of the Work with its own forces; provided, however, that nothing herein shall be interpreted as precluding the right of a Subcontractor who has agreed to provide all of the materials and labor for a trade to subcontract the labor portion only to a sub-subcontractor.

5.2.4 Third-Party Rights. Contractor acknowledges that County is an intended third-party beneficiary to all contracts between Contractor and its first-Tier Subcontractors. Notwithstanding the foregoing or anything else to the contrary in the Contract Documents, there is no intent on the part of County or Contractor to create any rights (including, without limitation, third-party beneficiary rights) in favor of any Subcontractor, of any Tier, against County and nothing contained in the Contract Documents and no course of conduct, act or omission on the part of County shall be construed as creating a direct or indirect contractual right in favor of any Subcontractor, of any Tier, and against County.

5.2.5 All Subcontractor Tiers. It is the Contractor's obligation to see to it that all obligations of the Contractor are assumed by (or, "flow down") to the Subcontractors, of every Tier, by the inclusion of contractual provisions requiring each of the Subcontractors, of every Tier, to bind not only themselves but their lower-Tier Subcontractors to the obligations assumed by Contractor under the Contract Documents.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 **Contingent Assignment.** Contractor hereby contingently assigns to County, or to such person or entity as County, in its sole and absolute discretion, designates, all of its interest in subcontracts entered into by Contractor with its first-Tier Subcontractors. If a first-Tier Subcontractor has provided a performance bond, then Contractor's rights under such performance bond are likewise hereby deemed contingently assigned to County or its designee and provision shall be made in the performance bond for surety's consent to such contingent assignment.

5.3.2 **Acceptance by County.** The contingent assignments provided for by this Section 5.3 will be effective only as to those subcontracts and performance bonds which County or its designee accepts in writing. Said acceptance is the sole condition upon which the effectiveness of such assignments are contingent. County or its designee may accept any such assignment at any time during the course of the Work and prior to Final Completion. Such contingent assignments are part of the consideration to County for entering into the Construction Contract with Contractor and may not be withdrawn prior to Final Completion.

5.3.3 **County Obligation.** County's or its designee's sole obligation in the event it accepts a contingent assignment of a subcontract under this Section 5.3 shall be to pay in accordance with the terms of such subcontract for Work performed after written notice of acceptance of such assignment. In the event County directs that such assignment be made to County's designee, then such designee only, and not County, shall be solely liable under such assignment for Work performed after written notice of acceptance of such assignment.

5.4 COMMUNICATIONS BY COUNTY

County shall have the right to communicate, orally or in writing, with the Subcontractors with respect to matters that are related to Contractor's performance of its obligations under the Contract Documents. Nothing herein shall be interpreted as extending to County the right as part of such communications to direct the manner in which any Subcontractor performs the Work. Except as otherwise provided in the Construction Contract or these General Conditions, Contractor shall be provided with a copy of all such communications that are in writing. Such communications shall not create, or be interpreted as creating, any contractual obligation of County to any Subcontractor.

5.5 DOCUMENT AVAILABILITY

Contractor shall make available to each proposed Subcontractor with whom it enters into a contract for performance of any portion of the Work, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound so as to ensure that all matters disclosed thereby are taken into consideration and included in the terms of such contracts and shall identify to such Subcontractor the terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. The Subcontractors shall similarly be required to make copies of applicable portions of such documents available to their respective proposed sub-subcontractors or sub-subconsultants.

5.6 NO LIABILITY OF COUNTY

Nothing set forth in this Article 5, and no action taken by County with respect to review or approval of the Subcontractors or their contracts, shall impose any liability or responsibility upon County nor relieve Contractor of its responsibilities under the Contract Documents or Applicable Laws.

ARTICLE 6 COUNTY'S OWN FORCES AND SEPARATE CONTRACTORS

6.1 COUNTY'S RIGHT TO PERFORM CONSTRUCTION WITH OWN FORCES AND TO AWARD SEPARATE CONTRACTS

6.1.1 **Right of County.** County reserves the right to perform construction or operations related to the Project with County's own forces and to award other contracts to Separate Contractors in connection with other portions of the Project or other construction or operations on the Site.

6.1.2 **Separate Contractors.** Contractor shall ascertain to its own satisfaction the scope of the Project and the nature of any other contracts that have been or may be awarded by County to Separate Contractors in prosecution of the Project. Contractor shall look solely to such Separate Contractors, and County shall not be responsible, for any Losses for which Contractor is not provided a right or recovery by means of a right to Contract Adjustment for Compensable Change or Compensable Delay, that are suffered by Contractor or the Subcontractors, of any Tier, resulting directly or indirectly from the conduct of such work by the Separate Contractors.

6.1.3 **Coordination.** Nothing in the Contract Documents creates or will create any duty on the part of County to coordinate the Work of Contractor with the work of Separate Contractors. Contractor shall, when directed to do so by County, participate with the Separate Contractors and County in reviewing the Separate Contractors' construction schedules. Contractor and Separate Contractors will coordinate all work with the other so as to facilitate the general progress of the Project. Contractor agrees that any recovery of Losses for which Contractor is not provided a right or recovery by means of a right to Contract Adjustment for Compensable Change or Compensable Delay, that are suffered by Contractor due to a failure by a Separate Contractor to coordinate its work with the Work of Contractor will be sought directly against the Separate Contractors as set forth elsewhere in this Article 6.

6.1.4 **Disputes.** Contractor and County agree that Separate Contractors in direct contractual privity with County are third party beneficiaries of the Contract Documents, but only to the extent of claims and causes of action against Contractor arising out of or resulting from Contractor's performance or failure of performance under the Contract Documents or any act or omission of Contractor or the Subcontractors causing Loss to such Separate Contractors. Contractor consents to being sued by Separate Contractors for Losses caused by Contractor or any of the Subcontractors. Contractor hereby waives lack of privity of contract with such Separate Contractors as a defense to such actions.

6.1.5 **Remedy.** If Contractor as a result of the acts or omissions of one or more of the Separate Contractors suffers a Loss that is not compensated by means of a right given to Contractor under the Contract Documents to a Contract Adjustment, then Contractor's sole remedy is to assert a claim or cause of action directly against the Separate Contractor(s) causing the Loss and Contractor hereby releases, acquits, holds harmless and forever discharges County of and from any and all liability for such Loss.

6.2 MUTUAL RESPONSIBILITY

6.2.1 **Use of Site.** Nothing contained in the Contract Documents shall be interpreted as granting Contractor exclusive use or occupancy of the Site. Contractor shall afford County's own forces and the Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. Contractor shall not Delay the work of the Separate Contractors or County's own forces.

6.2.2 **Adjoining Work.** If part of Contractor's performance of the Work depends for proper execution or results upon construction or operations by County's own forces or Separate Contractors, Contractor shall, prior to proceeding with that portion of the Work, carefully inspect such construction and operations and promptly report in writing to the County apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Contractor will be responsible, at Contractor's Own Expense, for Losses to County resulting from any such discrepancies or defects not reported in accordance with this Paragraph 6.2.1 that were apparent or that should have been apparent to Contractor on careful inspection.

6.2.3 **Damage.** Contractor shall promptly remedy Loss caused by Contractor or its Subcontractors to completed construction or partially completed construction on the Site, or to property of County or the Separate Contractors.

6.2.4 **Disputes.** Contractor shall notify the County in writing within five (5) Days if it believes it has experienced or is experiencing any Delay or Loss due to the activities of County's own forces or the Separate Contractors or in the event of any dispute with County's own forces or a Separate Contractor.

6.2.5 **Settlement of Disputes.** If Contractor or any Subcontractor causes a Loss to a Separate Contractor, then Contractor will promptly settle the matter directly with the Separate Contractor and will defend, indemnify and hold County and the other Indemnitees harmless from any and all effects of such Loss in accordance with the terms of Section 3.18, above.

6.3 ALLOCATION OF CLEANUP COSTS

If a dispute arises among Contractor, the Separate Contractors and/or County as to the responsibility for maintaining the Site and surrounding area free from waste materials and rubbish, County may clean up such waste materials and rubbish and allocate the cost among those responsible as County determines in good faith to be just.

ARTICLE 7 CHANGES IN THE WORK

7.1 CHANGES

7.1.1 General. County is authorized to make Changes in the Work in accordance with the provisions of this Article 7.

7.1.2 Contract Adjustments. Contract Adjustments shall only be permitted as follows: (1) the Contract Price shall only be adjusted by means of a Change Order or Unilateral Change Order for Compensable Change, Deleted Work or Compensable Delay; and (2) the Contract Time shall be adjusted by means of a Change Order or Unilateral Change Order for Excusable Delay, Compensable Delay or Deleted Work. All Contract Adjustments to the Contract Price shall conform, without limitation, to the requirements of this Article 7. All Contract Adjustments to the Contract Time shall conform, without limitation, to the applicable requirements of this Article 7 and Article 8, below.

7.1.3 Exclusive Rights. The rights expressly set forth in the Contract Documents for Contract Adjustments constitute Contractor's exclusive rights for additional compensation or extensions of time and are intended to be in lieu of and wholly replace any other such rights and remedies that Contractor has under Applicable Laws for recovery or relief on account of Loss or Delay in connection with performance of the Work, it being the intent of the County and Contractor that if circumstances arise for which the Contract Documents do not provide to Contractor an express right to a Contract Adjustment, then such omission of an express right shall conclusively be deemed to mean that no right to a Contract Adjustment was intended; and, consistent with that intent, no right to a Contract Adjustment on account of such circumstances shall by any means, legal or equitable, of interpretation, construction, inference, implication or application be considered, found or adjudged to exist.

7.1.4 Written Authorization. Any Change performed by Contractor pursuant to any direction other than a duly authorized and executed Change Order, Unilateral Change Order or Construction Change Directive shall be at Contractor's Own Expense.

7.1.5 Prompt Performance. Subject to the procedures set forth in this Article 7 and elsewhere in the Contract Documents, all Changes shall be performed promptly and without Delay.

7.2 SIGNATURES AND AUTHORIZATIONS

7.2.1 Parties. A Change Order shall be executed by County and Contractor. A Unilateral Change Order shall be executed by the County. Construction Change Directives shall be executed in accordance with Section 7.5, below.

7.2.2 Form. Change Orders, Unilateral Change Orders and Construction Change Directives shall be executed using forms furnished by County or, if requested by County, using forms furnished by Contractor that are approved by County.

7.2.3 Authorization.

.1 Compensable Changes.

(1) Assistant CEO/EDA. A Compensable Change shall be performed by Contractor only if authorized by a Change Order, Unilateral Change Order or Construction Change Directive signed by the Assistant CEO/EDA in accordance with the requirements of this Article 7; provided, however, that Assistant

CEO/EDA's authority to bind the County to a Contract Adjustment shall be subject to the limitations of Public Contract Code §20142.

(2) **County's Project Manager.** The person identified by County as its "project manager" for the Project shall have the right to exercise the Assistant CEO/EDA's authority under this Paragraph 7.2.3, but only if and to the extent that such authority is expressly given to such project manager in a writing signed by the Assistant CEO/EDA (and not by a designee of the Assistant CEO/EDA).

(3) **Board of Supervisors.** Except as otherwise provided in Subparagraph 7.2.3.1 (4), below, if a Contract Adjustment increasing the Contract Price would exceed the limitations of Public Contract Code §20142, then in addition to written authorization by the Assistant CEO/EDA, such Compensable Change shall be performed only if approved by a vote of the Board of Supervisors in accordance with the requirements of Applicable Laws.

(4) **Disputed Changes.** If a dispute arises between County and Contractor over (a) whether a particular portion of the Work constitutes a Compensable Change or (b) the amount of the Contract Adjustment to which Contractor is entitled on account of a Compensable Change, then, notwithstanding such dispute, the Contractor shall, if ordered to do so in a Construction Change Directive signed by Assistant CEO/EDA, perform the disputed Work without Delay. Such direction by County shall not be interpreted as an agreement or admission by County that the disputed Change constitutes Extra Work or a Compensable Change for which Contractor is entitled to a Contract Adjustment. Compliance by Contractor with such direction shall not be interpreted as a waiver of Contractor's right to a Contract Adjustment if and to the extent that Contractor is entitled to a Contract Adjustment or Claim under the terms of the Contract Documents, including, without limitation, the right of Contractor to recover upon a Claim for the amount of any excess in the event that it is adjudged that the amount of the Contract Adjustment to which Contractor is entitled exceeds the limits of Public Contract Code §20142.

.2 WRITING OF ESSENCE. IT IS OF THE ESSENCE TO THE CONSTRUCTION CONTRACT BETWEEN CONTRACTOR AND COUNTY THAT ALL CHANGES MUST BE AUTHORIZED IN ADVANCE, IN WRITING, AS REQUIRED BY THIS ARTICLE 7. ACCORDINGLY, NO VERBAL DIRECTIONS, COURSE OF CONDUCT BETWEEN THE PARTIES, EXPRESS OR IMPLIED ACCEPTANCE OF CHANGES OR OF THE WORK, OR CLAIM THAT THE COUNTY HAS BEEN UNJUSTLY ENRICHED (WHETHER OR NOT THERE HAS BEEN SUCH ENRICHMENT) SHALL BE THE BASIS FOR A CONTRACT ADJUSTMENT IF CONTRACTOR HAS NOT OBTAINED ADVANCE WRITTEN AUTHORIZATION IN THE MANNER REQUIRED BY THIS ARTICLE 7.

7.3 CHANGE ORDERS

7.3.1 **Purpose.** The purpose of a Change Order is to establish the terms of the County's and Contractor's mutual agreement to a Contract Adjustment.

7.3.2 **Content.** A Change Order is a written instrument, prepared by the County, stating:

- .1 a Compensable Change or Deleted Work;
- .2 a Compensable Delay or Excusable Delay;
- .3 the amount of the Contract Adjustment, if any, to the Contract Price; and/or
- .4 the extent of the Contract Adjustment, if any, to the Contract Time.

7.4 UNILATERAL CHANGE ORDERS

7.4.1 **Purpose.** The purpose of a Unilateral Change Order is to establish the County's estimate of a disputed Contract Adjustment.

7.4.2 **Good Faith Determination.** The County's determination in a Unilateral Change Order of a Contract Adjustment shall be based upon a Good Faith Determination by County of the Contract Adjustment that is appropriate under the circumstances and consistent with the terms of the Contract Documents.

7.4.3 **Claim by Contractor.** If Contractor disputes any portion of the County's Good Faith Determination of a Contract Adjustment that is set forth in a Unilateral Change Order, Contractor shall file, within thirty (30) Days after issuance of the Unilateral Change Order by County, a Claim pursuant to Section 4.3, above. The amount of the Contract Adjustment requested in the Claim shall not exceed the difference between the amount (either in terms of dollar amount or number of Days) of the Contract Adjustment requested by Contractor and the amount (either in terms of dollar amount or number of Days) of the Contract Adjustment granted in the Unilateral Change Order. Contractor shall have no reserved right, and hereby waives any such right that may exist under Applicable Laws, to seek in such Claim a Contract Adjustment or recovery that is based upon any amount (either in terms of dollar amount or number of Days) that is in excess of such difference.

7.4.4 **WAIVER BY CONTRACTOR.**

FAILURE BY CONTRACTOR TO SUBMIT A CLAIM PURSUANT TO SECTION 4.3, ABOVE, WITHIN THIRTY (30) DAYS AFTER ISSUANCE OF A UNILATERAL CHANGE ORDER BY COUNTY SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.6 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO FURTHER RECOURSE OR RECOVERY BASED ON AN ASSERTION THAT THE AMOUNT OF THE CONTRACT ADJUSTMENT ON ACCOUNT OF THE CHANGE OR DELAY DESCRIBED IN SUCH UNILATERAL CHANGE ORDER SHOULD BE DIFFERENT THAN THE AMOUNT OF THE COUNTY'S GOOD FAITH DETERMINATION OF THE CONTRACT ADJUSTMENT AS SET FORTH IN SUCH UNILATERAL CHANGE ORDER.

7.5 **CONSTRUCTION CHANGE DIRECTIVES**

7.5.1 **Purpose.** The purpose of a Construction Change Directive is to: (1) direct the performance of a Change that does not involve a Contract Adjustment; (2) establish 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) direct performance of Work or a Change with respect to which there exists a dispute or question regarding the terms of a Contract Adjustment.

7.5.2 **No Contract Adjustment.** A Construction Change Directive that directs the performance of Work or a Change that does not involve a Contract Adjustment to the Contract Price or Contract Time may be authorized by either the Assistant CEO/EDA or the County's project manager and shall be promptly performed by Contractor so as to not cause Delay to any other portion of the Work. A Construction Change Directive directing performance of a Change that does not contain any statement indicating that a Contract Adjustment is requested or required shall be conclusively presumed to be a Change that is not a Compensable Change and no Contract Adjustment increasing the Contract Price or Contract Time will be made on account thereof.

7.5.3 **Agreed Contract Adjustment.** A Construction Change Directive that contains a complete or partial agreement by the County and Contractor with respect to the Contractor's right to, or the amount of, a Contract Adjustment shall be authorized in accordance with, conform to the requirements of and be binding upon County and Contractor as provided for in, this Paragraph 7.5.3.

.1 Complete Agreement. Each Construction Change Directive involving a Compensable Change or Deleted Work with respect to which there is complete agreement on the terms of the Contract Adjustment shall comply with the following:

(1) **Statement of Agreement.** A statement shall be included that the County and Contractor are in agreement on all of the terms of the Contract Adjustment related to performance of such Compensable Change and set forth a full description of the terms of the Contract Adjustment, including, without limitation, its effect on the Contract Price and Contract Time.

(2) **Legal Effect.**

(a) Upon Contractor.

THE AGREED TERMS OF THE CONTRACT ADJUSTMENT WITH RESPECT TO WHICH THERE IS A STATEMENT OF FULL AGREEMENT ON THE TERMS OF THE CONTRACT ADJUSTMENT FOR A CHANGE IN THE WORK SHALL BE FINAL AND BINDING UPON CONTRACTOR. ANY RIGHT OR CLAIM BY CONTRACTOR FOR ANY ADDITIONAL COMPENSATION OR EXTENSION OF TIME RELATING DIRECTLY OR INDIRECTLY TO SUCH CHANGE SHALL BE CONCLUSIVELY DEEMED WAIVED BY CONTRACTOR, EVEN IF THE CIRCUMSTANCES GIVING RISE TO SUCH ADDITIONAL COMPENSATION OR EXTENSION OF TIME WERE NOT SUSPECTED BY OR KNOWN TO THE CONTRACTOR AT THE TIME OF EXECUTION OF THE CONSTRUCTION CHANGE DIRECTIVE AND IF SUSPECTED OR KNOWN WOULD HAVE BEEN CONSIDERED BY CONTRACTOR TO HAVE BEEN MATERIAL TO CONTRACTOR'S AGREEMENT TO THE CONTRACT ADJUSTMENT SET FORTH IN THE CONSTRUCTION CHANGE DIRECTIVE.

(b) Upon County. In recognition of the fact that Construction Change Directives may be issued under circumstances in which the County may not have had the access to pertinent information required for the County to fully evaluate the circumstances giving rise to the Change, it is agreed that neither the issuance nor execution of, nor any statement contained in, nor any course of conduct in connection with, a Construction Change Directive (including, without limitation, a Construction Change Directive that constitutes a full agreement by County and Contractor on the terms of a Contract Adjustment) shall be interpreted as a waiver, release or settlement of any of County's rights relating to the subject matter of the Construction Change Directive, or as creating or implying any right of Contractor to a Contract Adjustment, if it is found by County upon further investigation that circumstances existed, not known to County at the time of executing the Construction Change Directive, demonstrating that the Contractor was not in fact entitled to a Contract Adjustment or was entitled to a Contract Adjustment on different terms than those agreed to in the Construction Change Directive.

.2 Partial Agreement. Each Construction Change Directive involving a Compensable Change or Deleted Work with respect to which there is only agreement on a portion of the terms of a Contract Adjustment shall comply with the following:

(1) Agreed Terms. The Construction Change Directive shall state those terms of the Contract Adjustment as to which there is agreement.

(a) Legal Effect. Except to the extent of any additional open (i.e., non-agreed) terms stated or reserved in the Construction Change Directive, such agreement shall have the same legal effect set forth in Subparagraph 7.5.3.1 (2), above.

(b) Time and Materials. In the event that County and Contractor agree in the Construction Change Directive to the "time and materials" method of calculation set forth in Subparagraph 7.7.1.1 (4), below, but do not agree upon a maximum price, then the total cost to County for the Work covered by the Construction Change Directive shall under no circumstances exceed a price that is reasonable, competitive and fair to County given the amount and type of Work involved and the circumstances under which the Compensable Change is performed.

(2) Open Terms. The Construction Change Directive shall state those terms of the Contract Adjustment that are "open" or "disputed"; meaning those terms as to which the County and Contractor did not reach agreement.

(a) ROM Estimate. If such open terms involve the amount of the Contract Adjustment to the Contract Price or Contract Time on account of a Compensable Change, then the Construction Change Directive shall also include a Reasonable Order of Magnitude Estimate prepared by Contractor, or prepared by County and acknowledged in writing as accepted by Contractor, of the probable amount of the Contract Adjustment to the Contract Price and Contract Time associated with performance of the Compensable Change.

(b) Legal Effect. A Reasonable Order of Magnitude Estimate constitutes neither (i) a guarantee by Contractor that the amount of the Contract Adjustment to the Contract Price or Contract Time that may be associated with the Compensable Change or Deleted Work covered by such Construction Change

Directive may not exceed the Reasonable Order of Magnitude Estimate nor (ii) authorization or agreement by County to a Contract Adjustment based on the amounts set forth in such Reasonable Order of Magnitude Estimate.

(c) **Time and Materials.** If County and Contractor state in the Construction Change Directive an agreement that the Contractor is entitled to a Contract Adjustment to the Contract Price on account of a Compensable Change, but do not state therein an agreement upon the method of calculation to be used for the Contract Adjustment from among the optional methods of calculation set forth in Paragraph 7.7.1, below, and if the County nonetheless directs Contractor to perform the Compensable Change pending future agreement on the amount of the Contract Adjustment, then it shall be conclusively presumed that County and Contractor have agreed that such Compensable Change shall be performed and compensated based upon the "time and materials" method of calculation set forth in Subparagraph 7.7.1.1 (4), below, and that the total Contract Adjustment for performance thereof shall under no circumstances exceed a price that is reasonable, competitive and fair to County given the amount and type of Work involved and the circumstances under which the Compensable Change is performed.

7.5.4 Disputed Contract Adjustment. Each Construction Change Directive involving a Contract Adjustment with respect to which there is a dispute or partial agreement shall, if Contractor is ordered to do so in a Construction Change Directive signed by the Assistant CEO/EDA, be performed by Contractor without Delay. Except as otherwise provided elsewhere in this Section 7.5, with respect to any open terms as to which the County and Contractor have not reached agreement both County and Contractor shall be deemed to have reserved their respective rights and defenses.

7.5.5 Other Notices. With respect to any Contract Adjustment or portion of a Contract Adjustment that is not fully resolved in a Construction Change Directive, neither issuance nor execution of such Construction Change Directive shall be interpreted as relieving Contractor of its obligation to comply with the requirements of these General Conditions relative to timely submission of notices required by the Contract Documents, including, without limitation, Notice of Change, Change Order Request, Notice of Delay or Request for Extension.

7.6 PROCEDURES

7.6.1 Notice of Change.

.1 Submission. Contractor shall submit a written Notice of Change to County if any instruction, request, drawing, specification, action, condition, omission, default or other circumstance occurs that constitutes a Compensable Change, Deleted Work, Compensable Delay or other matter that may involve or require a Contract Adjustment (additive or deductive). Such notice shall be provided prior to commencement of performance of the Work affected and no later than three (3) working days after the Discovery Date of such circumstance.

.2 Form. Notices of Change shall be provided using forms furnished by County or, if requested by County, using forms furnished by Contractor that are approved by County. Failure by County to request or approve a particular form shall not relieve Contractor of its obligation to provide a Notice of Change in a written form that complies with the requirements specified in Subparagraph 7.6.1.3, below.

.3 Content. Each Notice of Change in order to be considered complete shall include:

(1) a general statement of the circumstances giving rise to the Notice of Change (including, without limitation, identification of any related Construction Change Directive);

(2) a Reasonable Order of Magnitude Estimate by Contractor of any related Contract Adjustments (additive and deductive) to the Contract Price; and,

(3) if such circumstances involve a right to adjustment of the Contract Time due to Compensable Delay or Excusable Delay that has not been waived pursuant to Subparagraph 8.2.2.4, below, or Subparagraph 8.2.3.4, below, Contractor shall include, if not previously provided, a complete and timely Notice of Delay.

.4 WAIVER BY CONTRACTOR.

FAILURE BY CONTRACTOR TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE UNDER CIRCUMSTANCES WHERE A NOTICE OF CHANGE INVOLVING A CHANGE IS REQUIRED BY THIS PARAGRAPH 7.6.1 SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.6 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE.

.5 Deductive Adjustments. Failure by Contractor to submit a timely or proper Notice of Change under circumstances in which a Notice of Change is required shall in no way affect County's right to any deductive Contract Adjustment on account of such circumstances.

7.6.2 Change Order Request.

.1 Submission. With respect to any matter that may involve or require a Contract Adjustment (additive or deductive) of the Contract Price, Contractor shall, within fourteen (14) Days after receipt by the County of a Notice of Change pursuant to Paragraph 7.6.1, above, submit to the County a written Change Order Request.

.2 Form. Change Order Requests shall be provided using forms furnished by County or, if requested by County, using forms furnished by Contractor that are approved by County. Failure by County to request or approve a particular form shall not relieve Contractor of its obligation to provide a Change Order Request in a written form that complies with the requirements stated in Subparagraph 7.6.2.3, below.

.3 Content. Each Change Order Request in order to be considered complete shall include:

(1) a detailed description of the circumstances for the Compensable Change, Deleted Work or Compensable Delay;

(2) a complete, itemized cost breakdown (additive and deductive) of the Allowable Costs that form the basis for the Contractor's request for Contract Adjustment, including: (a) if the pricing is based on time and materials charges, all of Contractor's and each Subcontractor's Allowable Costs (including, without limitation, quantities, hours, unit prices, and rates) and Allowable Markups and (b) if the pricing is in the form of a lump sum price a detailed breakdown of the lump sum price into its component and individual items of Allowable Costs and Allowable Markup; and

(3) if such circumstances involve a right to a Contract Adjustment of the Contract Time due to Compensable Delay or Excusable Delay that has not been waived pursuant to Subparagraph 8.2.2.4, below, or Subparagraph 8.2.3.4, below, Contractor shall include, if not previously provided, a complete and timely Request for Extension.

.4 WAIVER BY CONTRACTOR.

FAILURE BY CONTRACTOR TO PROVIDE A COMPLETE AND TIMELY CHANGE ORDER REQUEST UNDER CIRCUMSTANCES WHERE A CHANGE ORDER REQUEST INVOLVING A CHANGE IS REQUIRED BY THIS PARAGRAPH 7.6.2 SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.6 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE.

.5 Deductive Adjustments. Failure by Contractor to submit a timely or proper Change Order Request under circumstances in which a Change Order Request is required shall in no way affect County's right to any deductive Contract Adjustment on account of such circumstances.

7.6.3 Formal Notice of Essence. Contractor recognizes and acknowledges that timely submission of a formal Notice of Change and Change Order Request, whether or not the circumstances of the Change may be known to the County or available to County through other means, is not a mere formality but is of crucial importance to the ability of County to promptly identify, prioritize, evaluate and mitigate the potential effects of Changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in Requests for Information,

statements at regular job meetings or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of Paragraph 7.6.1, above, and Paragraph 7.6.2, above, shall therefore be insufficient.

7.7 PRICING

7.7.1 Basis of Calculation.

.1 Changes Not Involving Time. Contract Adjustments to the Contract Price on account of Compensable Changes or Deleted Work, other than Contract Adjustments to the Contract Price for Compensable Delay, shall be calculated according to one of the following methods:

(1) **Lump Sum.** By mutual acceptance of a lump sum proposal from Contractor based solely on Allowable Costs and Allowable Markups, that is properly itemized and supported by sufficient substantiating data to permit evaluation.

(2) **Unit Prices.** By the unit prices set forth in the Construction Contract or such other unit prices as are subsequently and mutually agreed to in writing between the County and Contractor, with no amount added thereto for Allowable Markups.

(3) **Estimating Guides.** For Compensable Changes with respect to which County elects to make a unilateral and final determination pursuant to Paragraph 7.7.11, below, by the sum of all the following:

(a) **Materials.** The reasonable value of materials and equipment documented as having been actually incorporated into the Work, which reasonable value may be less but shall never be more than Contractor's actual Allowable Costs therefor.

(b) **Labor.** An estimate of the reasonable costs of labor, installation and other services using the lower of the estimated prices for the locale of the Project (or if prices are not reported for the locale of the Project, the estimated prices that are reported for the region in which the Project is located) as reported in following recognized estimating guides: (i) R. S. Means Company, Inc. Building Construction Cost Data, Western Region - Latest Edition, P.O. Box 800 Kingston, MA 02364-800; or (ii) Lee Saylor, Inc. Current Construction Costs - Latest Edition, 9420 Topanga Canyon Boulevard, Woodland Hills, CA 91311.

(c) **Allowable Markup.** The amount that results when the applicable Allowable Markup is applied to the sum of the amounts derived from preceding Clauses (a) and (b) of this Subparagraph 7.7.1.1 (3).

(4) Time and Materials.

(a) Compensable Changes.

(i) **Contract Adjustment.** With respect to Compensable Changes, if none of the methods provided for in Subparagraphs 7.7.1.1 (1) through 7.7.1.1 (3), above, is applicable, then the additive amount increasing the Contract Price shall be calculated by taking (A) the total of the reasonable expenditures by Contractor and its Subcontractors, documented in the manner required by Paragraph 7.7.2, below, for Allowable Costs that are actually and directly incurred and paid in the performance of the Compensable Change, not to exceed for any Compensable Change a price that is reasonable, competitive and fair to County given the amount and type of Work involved and the circumstances under which the Compensable Change is performed, and (B) adding thereto the amount which results when the applicable Allowable Markups are applied to such total specified in preceding Clause (A) of this Subparagraph 7.7.1.1 (4) (a) (1).

(ii) **T & M/Guaranteed Maximums.** A Contract Adjustment that is calculated pursuant to this Subparagraph 7.7.1.1 (4) shall be subject to a not-to-exceed or guaranteed maximum price if such not-to-exceed or guaranteed maximum price has been mutually agreed upon between County and Contractor.

(iii) **Lump Sum Options.** If Contractor has reason to believe that a lump sum or unit price for a Subcontractor's performance of a portion of Extra Work authorized to be performed on a time and materials basis is available and Contractor has reason to believe such price is lower than the price that would be charged by the Subcontractor pursuant to the foregoing time and materials calculation, then Contractor has an obligation to inform County of that fact (along with the provision to the County of a complete itemized breakdown in accordance with Subparagraph 7.6.2.3(2), above) so as to afford County the opportunity, on a fully informed basis as to the component Allowable Costs and Allowable Markups that comprise such price, to avail itself of such favorable pricing.

(b) **Deleted Work.** With respect to Deleted Work (whether or not the Deleted Work involves a related Compensable Change as described in Paragraph 7.7.8, below), if none of the methods provided for in Subparagraphs 7.7.1.1 (1) through 7.7.1.1 (3), above, is applicable, then, in addition to the reduction, if any, that may be due to Owner pursuant to Subparagraph 8.2.6.2, below, (pertaining to Contract Adjustments shortening the Contract Time due to Deleted Work) and any additional reductions or credits to which County may be entitled under Paragraph 7.7.5, below, the Contract Price shall be reduced by the greater of either:

(i) the value assigned to the Deleted Work in the Schedule of Values attached to the Construction Contract, inclusive of all estimated markups by Contractor and any Subcontractor for overhead and profit set forth in the Schedule of Values (or, if insufficient detailed information on costs, overhead and profit for the Deleted Work is explicitly assigned in the Schedule of Values, as derived from the cost, bidding and/or estimating information that formed the basis for the establishment of the values set forth in such Schedule of Values); or

(ii) a reasonable estimate of the value of the Deleted Work (inclusive of all costs, overhead and profit) as of the date that the Construction Contract was executed by County and Contractor.

.2 Changes Involving Time. Contract Adjustments that are based on an extension of the Contract Time for Compensable Delay or a shortening of the Contract Time due to Deleted Work shall be calculated in the manner stated in the provisions of Section 3.3 of the Construction Contract and Article 8, below. Contract Adjustments that are based on an acceleration in performance of the Work that is ordered by County in writing to overcome a Compensable Delay for which the Contractor is entitled to an extension of the Contract Time that has been properly requested and is not granted by County due to a County decision to accelerate rather than extend the Contract Time shall be calculated in the manner stated in the provisions of Article 8, below.

7.7.2 Time and Materials Documentation. Without limitation to any other provisions of the Contract Documents, Contractor's right to reimbursement of Allowable Costs incurred by Contractor or Subcontractors in the performance of a Compensable Change for which the Contract Adjustment is calculated pursuant to the time and materials method set forth in Subparagraph 7.7.1.1 (4), above, shall be conditioned on Contractor's compliance with the following conditions with respect to documentation of the Extra Work that is involved in the performance of the Compensable Change:

.1 Labor. At the close of each Day on which such Extra Work is performed, Contractor shall submit to County and, if requested, to the Inspector of Record, an Extra Work report, on forms provided by County, that sets forth with respect to each and all of the actual hours spent in performance of the Extra Work on the Day that the Extra Work was performed the following: the names of the workers, their classifications, hours worked and hourly rates. Such forms shall include a written certification by Contractor's project manager or superintendent at the time of submission that the information contained therein is complete and accurate.

.2 Materials, Equipment. At the close of each Day on which such Extra Work is performed, Contractor shall submit to County and, if requested, to the Inspector of Record, an Extra Work report, on forms provided by County, that sets forth with respect to each and all of the materials and equipment used or consumed in the performance of the Extra Work on the Day that the Extra Work was performed, the following: a list of the materials and equipment, prices or rates charged, in the case of equipment a description of the type of equipment, identification number, and hours of operation (including loading and transportation), and copies of delivery tickets, invoices or other documentation confirmatory of the foregoing.

.3 Other Expenditures. At the close of each Day on which such Extra Work is performed, Contractor shall submit to County and, if requested, to the Inspector of Record, an Extra Work report, on forms provided by County, that sets forth a list of other expenditures constituting Allowable Costs incurred in performance of the Extra Work on the Day that the Extra Work was performed, along with documentation verifying the amounts thereof in such detail as County may require.

.4 Subsequent Documentation. Documentation not available on any Day that a portion of the Extra Work is performed shall be submitted as soon as they are available but not later than twenty-one (21) Days after the earlier of the Day of delivery or incorporation of the particular item of Extra Work at the Site.

.5 Subcontractor Costs. Extra Work performed by Subcontractors on a time and materials basis shall be documented in the same manner as required of Contractor under this Paragraph 7.7.2. If Owner approves of a lump sum price for a Subcontractor's performance of Extra Work, then Contractor shall submit in lieu of the documentation otherwise required by this Subparagraph 7.7.2.5, such documentation as may be requested by Owner confirming the Extra Work performed on any given Day.

.6 Authentication. In addition to the foregoing, County may require that Contractor comply with other reasonable requirements pertaining to observation and verification of time and materials work and authentication of time and materials tickets and invoices by persons designated by County for such purpose.

.7 WAIVER BY CONTRACTOR.

THE FAILURE OF CONTRACTOR TO SUBMIT AUTHENTICATION OF COSTS IN THE MANNER REQUIRED BY THIS PARAGRAPH 7.7.2 SHALL, IF COUNTY ELECTS IN ITS REASONABLE DISCRETION TO TREAT IT AS SUCH, CONSTITUTE A WAIVER BY CONTRACTOR OF ANY RIGHT TO A CONTRACT ADJUSTMENT FOR THE ALLOWABLE COSTS INCURRED FOR PERFORMANCE OF THAT PORTION OF THE EXTRA WORK FOR WHICH CONTRACTOR HAS FAILED TO PROVIDE SUCH AUTHENTICATION.

7.7.3 Allowable Costs. The term "Allowable Costs" (1) means the costs that are listed in this Paragraph 7.7.3 and (2) excludes costs that do not constitute Allowable Costs under Paragraph 7.7.4, below:

.1 Labor. Straight-time wages and, if specifically authorized by County in writing, overtime wages for employees employed at the Site, including wages for employees of Subcontractors performing engineering or fabrication detailing at locations other than at the Site. The use of a labor classification which would increase the Allowable Costs for Extra Work will not be permitted unless Contractor establishes the necessity for the use of such labor classification. Overtime wages and salaries shall only constitute an Allowable Cost to the extent permitted by the Contract Documents and only as specifically authorized by County in writing setting forth the amount of overtime anticipated, which amount shall be deemed the maximum amount of overtime reimbursable as an Allowable Cost. As part of the Allowable Costs permitted by this Subparagraph 7.7.3.1, Contractor shall be entitled to be reimbursed wages paid to a "time and materials clerk" employed by Contractor to track and document Compensable Changes that are authorized or permitted to be performed on a time and materials basis pursuant to Subparagraph 7.7.1.1 (4), above, provided that the time expended by such employee is verified by contemporaneously maintained time sheets maintained by such clerk showing the actual time spent tracking and documenting the performance of Compensable Changes separately from other tasks or functions performed by such clerk.

.2 Benefits. To the extent based on wages reimbursable under Subparagraph 7.7.3.1, above, net actual employer costs of payroll taxes (FICA, Medicare, SUTA, FUTA), insurance (as adjusted for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, or the like), health and welfare, pension, vacation, apprenticeship funds and benefits required by lawful collective bargaining agreements.

.3 Materials. Costs of materials used or consumed in the Work. Such costs for Extra Work shall be at a price that is competitive to the price charged for similar materials delivered within the general vicinity of the Site by other subcontractors, suppliers, manufacturers and distributors. The cost for any such item that is not new shall mean "fair market value" based on the estimated price a reasonable purchaser would pay to purchase the used material at the time it was used or consumed for the Work, which fair market value must be declared by Contractor and approved by County prior to such use or consumption.

.4 Taxes. Sales taxes on the costs of the materials described in Subparagraph 7.7.3.3, above.

.5 Equipment Rental. Rental charges for necessary machinery and equipment, exclusive of hand tools, whether rented from Contractor or others. No charge shall be allowed or credit required for items which have a replacement value of One Hundred Dollars (\$100) or less. The allowable rental rates shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, loading, transportation, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals. If equipment used for Extra Work is used intermittently and, when not in use, could be returned to its rental source at less expense to County than holding it at the Site, it shall be returned, unless Contractor elects to keep it at the Site at no expense to County. Under no circumstances shall the aggregate rentals chargeable for any item of equipment exceed the following percentages of the fair market value of the item at the time of its first use for the Work, which fair market value must be declared by Contractor and approved by County prior to the first use of such item in or for the Work: (1) if the item is owned by the Contractor or any company affiliated with Contractor, the aggregate rentals shall not exceed 75% of such fair market value; and (2) if the item is not owned by the Contractor or any company affiliated with Contractor, the aggregate rentals shall not exceed 100% of such fair market value. All equipment shall be acceptable to County, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and manufacturer's approved modifications shall be used to classify equipment, and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer. The cost of major repairs or overhauls of rented equipment or machinery shall be deemed a cost of business of the lessor of such equipment or machinery and shall not be reimbursable as an Allowable Cost.

.6 Subcontractors. Payments made by Contractor to Subcontractors; provided, however, that: (1) such payments are not otherwise precluded from reimbursement by the terms of the Contract Documents; (2) such payments are for Work performed in accordance with the requirements of the Contract Documents; (3) such payments are for amounts properly due and owing by Contractor under the terms of the governing contract between Contractor and such Subcontractor; and (4) in the case of payments for extra work performed by a Subcontractor pursuant to a change order executed between Contractor and a Subcontractor the change order was executed under circumstances in which the Subcontractor was entitled under the terms of its contract with Contractor to receive the amount of additional compensation agreed to in the change order.

.7 Royalties, Permits. Costs of royalties and permits.

.8 Bonds. Costs of bonds required to be furnished by Contractor (not Subcontractors) under the terms of the Contract Documents; provided, however, that such additional costs chargeable for Extra Work or credited for Deleted Work shall not exceed two percent (2%) of the costs described in Subparagraphs 7.7.3.1 through 7.7.3.7, above.

7.7.4 Costs Not Allowed. Allowable Costs shall not include any of the costs associated with any of the following (whether incurred by Contractor or a Subcontractor):

- .1** superintendent(s);
- .2** assistant superintendent(s);
- .3** project engineer(s);
- .4** project manager(s);
- .5** scheduler(s);
- .6** estimator(s);
- .7** drafting or detailing (except as otherwise permitted by Paragraph 7.7.3.1, above)
- .8** vehicles not dedicated solely to the performance of the Work;
- .9** small tools with a replacement value not exceeding One Hundred Dollars (\$100);

- .10 office expenses, including staff, materials and supplies;
- .11 on-Site and off-Site trailer and storage rental and expenses;
- .12 Site fencing not added solely due to the performance of Extra Work;
- .13 utilities, including gas, electric, sewer, water, telephone, telefax and copier equipment;
- .14 computer and data-processing personnel, equipment and software;
- .15 federal, state or local business, income and franchise taxes;
- .16 insurance (including, without limitation, general liability, automobile and worker's compensation);
- .17 without limitation to Contractor's right to liquidated damages under Section 3.3 of the Construction Contract, Losses, of any kind, incurred by Contractor or a Subcontractor, of any Tier, that arise from or relate to Delay (including Excusable Delay, Compensable Delay or Unexcused Delay) or acceleration to overcome the effects of such Delay; and
- .18 costs and expenses of any kind or item not specifically and expressly included in Paragraph 7.7.3, above.

7.7.5 Allowable Markups. Allowable Markups consist of the percentages set forth provided for by this Paragraph 7.7.5. Allowable Markups are deemed to cover, without limitation, the following: (1) direct and indirect overhead (including, without limitation, consumables, small tools and cleanup) and profit of the Contractor; (2) direct and indirect overhead (including, without limitation, consumables, small tools and cleanup) and profit of the Subcontractors, of every Tier; and (3) all costs that are not reimbursable to Contractor under Paragraph 7.7.4, above. Subject to the exclusions and limitations set forth in Paragraph 7.7.7, below, or elsewhere in the Contract Documents, Allowable Markups include and are limited to the following:

.1 Self-Performed Work

(1) **Compensable Change.** With respect to all or that portion of a Compensable Change involving Self-Performed Work, the Allowable Markup to Contractor shall be not more than five percent (5%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the Allowable Costs incurred by Contractor in the performance thereof, including, without limitation, Allowable Costs for materials or equipment purchased by Contractor from a first-Tier Subcontractor that is not an Installation Subcontractor.

(2) **Deleted Work.** With respect to all or that portion of Deleted Work involving Self-Performed Work, County shall be entitled to a credit equal to five percent (5%) of the amount of the credit for the savings to Contractor for the Self-Performed Work as calculated pursuant to Subparagraph 7.7.1.1 (4), (b), above.

.2 Installation Subcontractors (First-Tier)

(1) **Compensable Change.** With respect to all or that portion of a Compensable Change that is performed by a first-Tier Installation Subcontractor, the Allowable Markups to the first-Tier Installation Subcontractor and the Contractor shall be as follows:

(a) The Allowable Markup to the first-Tier Installation Subcontractor shall be not more than fifteen percent (15%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the Allowable Costs incurred by such first-Tier Installation Subcontractor in the performance of such Compensable Change.

(b) The Allowable Markup to Contractor shall be five percent (5%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the sum of (i) the Allowable

Costs incurred by such first-Tier Subcontractor in the performance of such Compensable Change and (ii) the amount which results when the Allowable Markups thereon that are permitted pursuant to preceding Clause (a) of this Subparagraph 7.7.5.2 (1) are multiplied times such Allowable Costs.

(2) **Deleted Work.** With respect to all or that portion of Deleted Work that was to have been performed by a first-Tier Installation Subcontractor, the Contract Price shall be reduced as provided in Subparagraph 7.7.1.1 (4), (b), above. In addition, a credit shall be due from Contractor of five percent (5%) of the amount of the total credit due pursuant to Subparagraph 7.7.1.1 (4), (b), above.

.3 Installation Subcontractors (Second-Tier)

(1) **Compensable Change.** With respect to all or that portion of a Compensable Change that is performed by a second-Tier Installation Subcontractor, the Allowable Markups to such second-Tier Installation Subcontractor, to the first-Tier Installation Subcontractor that is above and in the same vertical contractual line of Tiers with such second-Tier Installation Subcontractor and to the Contractor, shall be as follows:

(a) The Allowable Markup to the second-Tier Installation Subcontractor shall be not more than five percent (5%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the Allowable Costs incurred by such second-Tier Installation Subcontractor in the performance of such Compensable Change.

(b) The Allowable Markup to the first-Tier Installation Subcontractor that is above and in the same vertical contractual line of Tiers with such second-Tier Installation Subcontractor shall be not more than fifteen percent (15%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the sum of (i) the Allowable Costs incurred by such second-Tier Installation Subcontractor in the performance of such Compensable Change and (ii) the amount which results when the Allowable Markups thereon pursuant to preceding Clause (a) of this Subparagraph 7.7.5.3 (1) are multiplied times such Allowable Costs.

(c) The Allowable Markup to Contractor shall be five percent (5%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the sum of (i) the Allowable Costs incurred by the second-Tier Installation Subcontractor in the performance of such Compensable Change and (ii) the amounts which result when the Allowable Markups thereon that are permitted pursuant to Clauses (a) and (b) of this Subparagraph 7.7.5.3 (1) are multiplied times such Allowable Costs.

(2) **Deleted Work.** With respect to all or that portion of Deleted Work that was to have been performed by a second-Tier Installation Subcontractor, the Contract Price shall be reduced as provided in Subparagraph 7.7.1.1 (4), (b), above. In addition, a credit shall be due from Contractor of five percent (5%) of the amount of the total credit due pursuant to Subparagraph 7.7.1.1 (4), (b), above.

.4 Other Subcontractors.

(1) **Compensable Changes:** With respect to any other Subcontractor, of any Tier, performing all or a portion of a Compensable Change who is not an Installation Subcontractor or who is an Installation Subcontractor below the second-Tier, the following shall apply:

(a) No markup shall be allowed to such other Subcontractor.

(b) The Subcontractor that is positioned in the Tier immediately above such other Subcontractor shall be entitled to an Allowable Markup of not more than five percent (5%) upon the Allowable Costs incurred by such other Subcontractor in the performance thereof.

(c) No other Allowable Markup by any Subcontractor of any Tier above such other Subcontractor shall be permitted.

(d) Contractor shall be entitled to an Allowable Markup of five percent (5%) of the sum of (i) the Allowable Costs of such other Subcontractor incurred in the performance of such Compensable

Change and (ii) the amount which results when the Allowable Markup permitted by Clause (b) of this Subparagraph 7.7.5.4 (1) is multiplied times such Allowable Costs.

(2) **Deleted Work.** With respect to all or that portion of Deleted Work that was to have been performed by such other Subcontractor who is not an Installation Subcontractor or who is an Installation Subcontractor below the second-Tier, the Contract Price shall be reduced as provided in Subparagraph 7.7.1.1 (4), (b), above. In addition, a credit shall be due from Contractor of five percent (5%) of the amount of the total credit due pursuant to Subparagraph 7.7.1.1 (4), (b), above.

7.7.6 Review of Markups. It is Contractor's responsibility to review information submitted by Subcontractors to ensure that all markups comply with the requirements of the Contract Documents. Payment by the County of markups that exceed Allowable Markups shall not be considered as a waiver by County of the right to require repayment by Contractor of any markup charged that is in excess of Allowable Markups and such excess amounts shall be promptly paid by Contractor to County.

7.7.7 Exclusions and Limitations. Allowable Markups are not permitted:

- .1 on agreed unit prices;
- .2 on materials, products or equipment furnished by County;
- .3 on liquidated damages payable to Contractor pursuant to Section 3.3 of the Construction Contract for Compensable Delay;
- .4 to a Subcontractor who contracts to perform a Compensable Change that is in fact wholly performed by another Subcontractor (for purposes of this Paragraph 7.7.7, "wholly performed" means that all of the Compensable Change, other than supervision or minor labor or materials, are furnished by such other Subcontractor); or
- .5 on any cost or compensation with respect to which the Contract Documents state that there shall be "no Allowable Markup", "no markup for overhead and profit" or words of similar meaning.

7.7.8 Net Calculations. If any one Change or collection of Changes in the same or related portions of the Work, or in multiple portions of Work covered by a single bulletin or instruction by County, involve both Compensable Change and Deleted Work, and if the added Allowable Costs resulting from the Compensable Change exceed the reduction calculated in accordance with Subparagraph 7.7.1.1 (4), (b), above, (excluding any Allowable Markup to the Contractor) then the calculation of Allowable Markups to Contractor shall be based on and limited to the resulting net increase in the Allowable Costs.

7.7.9 Unit Prices. Unless otherwise stated in the Contract Documents, unit prices stated in the Contract Documents or subsequently agreed upon by County and Contractor shall be deemed to include and encompass all costs of performance, overhead and profit, including, without limitation, all Allowable Costs and Allowable Markups. If the unit price stated in the Contract Documents is based on an estimated quantity established by County in the Construction Contract and the actual quantity of such unit-priced item varies by more than 25% above or below the estimated quantity, an equitable adjustment in the Contract Price shall be made upon demand of either County or Contractor. Such equitable adjustment shall be based solely upon any increase or decrease in Allowable Costs (without any Allowable Markups), due solely to the variation above 125% or below 75% of the estimated quantity.

7.7.10 Discounts. For purposes of determining Allowable Costs of a Compensable Change, all trade discounts, rebates, refunds, and returns from the sale of surplus materials and equipment shall accrue and be credited to County, and Contractor shall take all necessary steps to ensure that such discounts, rebates, refunds, and returns are secured.

7.7.11 Prompt Pricing. It is fundamental to the County's objective of controlling costs that performance of Compensable Changes on a time and materials basis of compensation and without a not-to-exceed price be curtailed. Contractor recognizes that prompt pricing by Contractor is critical to this objective. Accordingly, in addition to and without limitation on any of the County's other rights or remedies, including, without limitation, its right to enforce a

waiver under Subparagraph 7.6.2.4, above, it is agreed that if Contractor fails to timely submit a complete Change Order Request in accordance with Paragraph 7.6.2, above, with respect to any circumstance, event or occurrence constituting a Compensable Change then: (1) any Delay to the performance of the Work associated with the performance, delayed performance or nonperformance of such Compensable Change shall be conclusively deemed to be an Unexcused Delay; and (2) the County shall have the option, exercised in its sole discretion, to unilaterally fix and determine the amount of the Contract Adjustment to the Contract Price for such Compensable Change based on the "estimating guide" method set forth in Subparagraph 7.7.1.1 (3), above, which determination shall be conclusively final and binding upon Contractor.

7.7.12 Final Payment. No Claim by Contractor for a Contract Adjustment shall be allowed if asserted after Final Payment.

7.7.13 Full Resolution. Except as otherwise stated in Paragraph 7.7.14, below, the signing of a Change Order by Contractor and the County shall be conclusively deemed to be a full resolution, settlement and accord and satisfaction with respect to any and all Loss and Delay, whether known or unknown at the time of execution of the Change Order, related to the subject matter of the Change Order, including, without limitation, all rights to recovery of costs, expenses or damages for delay, disruption, hindrance, interference, extended or extraordinary (direct and indirect) overhead, multiplicity of changes, loss of productivity, labor, wage or material cost escalations, inefficiency, legal expenses, consultant costs, interest, lost profits or revenue, bond and insurance costs, changes in taxes and other similar and related Losses. The foregoing provisions of this Paragraph 7.7.13 shall, whether or not they are expressly stated or referenced on the face of a Change Order, be deemed to be part of the terms of the Change Order and shall be deemed to supersede and govern over any other provision contained in any proposal, estimate or other documents attached to or referenced in such Change Order that conflicts with the provisions of this Paragraph 7.7.13. **ANY RIGHT OR CLAIM BY CONTRACTOR FOR ANY ADDITIONAL COMPENSATION OR EXTENSION OF TIME RELATING DIRECTLY OR INDIRECTLY TO A COMPENSABLE CHANGE DESCRIBED IN A FULLY EXECUTED CHANGE ORDER SHALL BE CONCLUSIVELY DEEMED WAIVED BY CONTRACTOR, EVEN IF THE CIRCUMSTANCES GIVING RISE TO SUCH ADDITIONAL COMPENSATION OR EXTENSION OF TIME WERE NOT SUSPECTED BY OR KNOWN TO THE CONTRACTOR AT THE TIME OF EXECUTION OF THE CONSTRUCTION CHANGE DIRECTIVE AND IF SUSPECTED OR KNOWN WOULD HAVE BEEN CONSIDERED BY CONTRACTOR TO HAVE BEEN MATERIAL TO CONTRACTOR'S AGREEMENT TO THE CONTRACT ADJUSTMENT SET FORTH IN THE CHANGE ORDER.**

7.7.14 Reserved Rights. Change Orders shall be executed by Contractor without any express reservation of rights by Contractor to reserve for the future the assertion of any right of recovery from the County for Loss or Delay arising out of or relating to the subject matter of the Change Order. Execution of a Change Order, Unilateral Change Order or Construction Change Directive shall not be interpreted as a waiver, release or settlement of any rights or claims that the County may have for any of the following: (1) Defective Work; (2) liquidated damages or actual Losses for Delay; or (3) recoupment by County (by way of withholding of funds, set off or recovery from Contractor) of amounts paid by County for costs or markups on costs that the County discovers, following payment of such amounts to Contractor, do not constitute proper charges to County, or that constitute charges that are not properly substantiated, under the terms of the Contract Documents.

7.7.15 No "Total Cost" Calculations. Contractor represents and warrants that it has the ability to generate and maintain complete and accurate cost accounting records that, if required, will reflect the actual costs of the Work incurred or avoided for multiple Compensable Changes and, on an event-by-event basis, the effect of multiple and concurrently occurring or caused Compensable Delays on the progress of the Work. Accordingly, Contractor agrees that all Change Order Requests and Claims shall be itemized in a manner that, with reasonable mathematical certainty and without reliance upon probabilities or inferences, segregates on a discrete, event-by-event basis the direct, actual Allowable Costs associated with each individual Compensable Change or Compensable Delay. Unless otherwise agreed to by County in writing in the exercise of its sole discretion, Change Order Requests and Claims shall not be based, in whole or in part, upon any methodology (such as "total cost" or "modified total cost" methodologies) that purports to establish Contractor's entitlement to additional compensation inferentially based, solely or principally, on the difference between Contractor's total costs for the Work or a portion of the Work and its original Bid.

7.7.16 Multiple Changes. The County reserves the absolute right to make whatever Changes, including, without limitation, Compensable Changes or Deleted Work, that it determines, in its sole discretion, are necessary or

otherwise desirable. Under no circumstances shall the individual or cumulative number, value or scope of such Changes, or their individual and cumulative impact on the Work, become a basis for Contractor to assert any claim for breach of contract, abandonment, rescission, termination, cardinal change or reformation of the Construction Contract, nor shall such circumstances be the basis for Contractor, or any of the Subcontractors, of any Tier, to assert a right of recovery of any Loss if such right is not permitted by, or is in excess of that allowed under, the Contract Documents.

7.7.17 Continuous Performance. Subject to Contractor's rights under Section 15.4, below, no dispute or disagreement with respect to any Changes or Delay, including, without limitation, disputes over Contractor's right to or the terms of a Contract Adjustment, shall relieve or excuse Contractor from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work, including performance of any disputed Changes.

ARTICLE 8 CONTRACT TIME

8.1 COMMENCEMENT AND COMPLETION

8.1.1 Date of Commencement. The Date of Commencement shall not be postponed by the failure of Contractor or of persons or entities for whom Contractor is responsible to perform an obligation. Contractor shall not knowingly, except by agreement or instruction of the County in writing, commence operations on the Site or elsewhere prior to receipt of a Notice to Proceed. Contractor shall not commence any Work at the Site prior to its obtaining the insurance required by Article 11, below, and the Performance Bond and Payment Bond required by Article 12, below, and the Date of Commencement of the Work shall not be changed by the effective date of such insurance or bonds.

8.1.2 Substantial, Final Completion. Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion and Final Completion within the Contract Time, as adjusted for extensions of time duly permitted, authorized and noticed pursuant to Section 8.2, below.

8.1.3 Adjustments to Contract Time. Subject to the limitations set forth in this Article 8 and elsewhere in the Contract Documents, the Contract Time shall be extended for Compensable Delays and Excusable Delays and shall, where appropriate, be shortened for Deleted Work.

8.1.4 Early Completion. Nothing stated in these General Conditions or elsewhere in the Contract Documents shall be interpreted as creating any contractual right, express or implied, on the part of Contractor to finish the Work earlier than the Contract Time. Contractor has included in its Contract Price the costs of all Contractor's and its Subcontractors' direct and indirect overhead, including but not limited to all staff, temporary facilities, temporary utilities and home office overhead for the entire duration of the Contract Time. These costs have been included in the Contract Price notwithstanding Contractor's anticipation of possibly completing the Work in fewer Days than established by the Contract Time. Under no circumstances (including, without limitation, circumstances in which the County has approved in writing of Contractor completing early) shall the County be liable to Contractor for any Losses, of any kind, due to the inability of Contractor to complete the Work earlier than the Contract Time, regardless of the cause, including, without limitation, Delays due to acts or omissions (intentional or negligent) of the County, Inspectors of Record, County Consultants, Separate Contractors or others. If the Contractor anticipates completing early, it must obtain in advance County's approval in writing of such early completion. Approval by County of such early completion may be granted or withheld in the County's sole and absolute discretion.

8.2 DELAYS AND EXTENSIONS OF TIME

8.2.1 Adjustments to Contract Time

.1 Extensions. Provided that Contractor has complied with the provisions of this Section 8.2 (including, without limitation, the requirements pertaining to timely delivery of a Notice of Delay and Request for Extension), if, as a result of Excusable Delay or Compensable Delay to the actual, as-built critical path of activities leading to achievement of Substantial Completion, Contractor is unable to achieve Substantial Completion within the Contract Time for Substantial Completion, then the Contract Time for Substantial Completion and Final Completion

shall be extended, either by Change Order or Unilateral Change Order, for the length of the proven, resulting Delay to Contractor's ability to so complete the Work. The Contract Time shall not be adjusted for Unexcused Delays.

.2 Shortening. Contractor shall within ten (10) Days after receiving notice of Deleted Work prepare and deliver to County a Time Impact Analysis of the impact of the Deleted Work upon the critical path to determine if the Contract Time should be shortened thereby and if so the duration of the shortening. If the County and Contractor are unable to agree upon the duration of the shortening, then County shall make a Good Faith Determination of the reasonable amount of time that the Contract Time shall be shortened on account of such Deleted Work.

.3 Prescribed Calculations.

(1) Work Day Lost Calculations. Contractor may claim an Excusable Delay or a Compensable Delay for a full Day only if all Work on a critical path activity is stopped for more than six (6) hours of a normal eight (8) hour Work Day and for a half-Day only if all Work on a critical path activity is stopped for three (3) to six (6) hours of such a normal Work Day. No Excusable Delay or Compensable Delay may be claimed if all Work on a critical path activity is stopped for less than three (3) hours of such a normal work Day. Similarly, where Deleted Work results in the projected avoidance of the need to perform more than six (6), or between three (3) and six (6) hours of all Work on a critical path activity on such a normal work day, the Contract Time shall be contracted by a full Day or half Day, respectively.

(2) Dry Out Time Calculations. Contract Adjustments to the Contract Time that are based upon unusual precipitation that is an Act of God as defined in Paragraph 1.1.2, above, shall include, in addition to the number of Days of Excusable Delay to which Contractor is entitled due to a cessation of Work that occurs at the Site while the unusual precipitation is occurring, an additional extension for the Delay to the critical path of activities affecting Substantial Completion that is the result of Contractor being unable, after cessation of the unusual precipitation at the Site, to proceed with performance of Work due to wet or muddy conditions at the Site (hereinafter referred to as "dry out" time); provided, however, that the amount of dry out time for which Contractor is entitled to an extension of time in any given calendar month shall not exceed the number of Days that is the product derived by multiplying (a) the number of Days of Excusable Delay to which Contractor is entitled due to a cessation of Work that occurs at the Site while such unusual precipitation is occurring, by (b) a fraction, the (i) numerator of which is the number of Days of Excusable Delay due to measurable unusual precipitation occurring at the Site during such calendar month that constitutes an Act of God as defined in Paragraph 1.1.2, above, and (ii) the denominator of which is the total number of Days of measurable precipitation occurring at the Site during said calendar month (including both the number of Days comprising the normal, 10-year monthly average of measurable precipitation recorded by NOAA and the excess, or unusual precipitation that constitutes an Act of God as defined in Paragraph 1.1.2, above).

8.2.2 Notice of Delay.

.1 Submission. Contractor shall submit written Notice of Delay to County if any instruction, request, drawing, specification, action, condition, omission, default or other circumstance occurs that constitutes an Excusable Delay or Compensable Delay or other matter that may involve or require a Contract Adjustment extending the Contract Time. Such notice shall be provided prior to performance of the Work affected or involved and no later than seven (7) Days after the Discovery Date of such circumstance.

.2 Form. Notices of Delay shall be provided using forms furnished by County or, if requested by County, using forms furnished by Contractor that are approved by County. Failure by County to request or approve a particular form shall not relieve Contractor of its obligation to provide Notice of Delay in a written form that complies with the requirements of this Paragraph 8.2.2.

.3 Content. Each Notice of Delay in order to be considered complete shall include:

(1) a general statement of the circumstances giving rise to the Notice of Delay (including, without limitation, identification of any related Construction Change Directive);

(2) a Reasonable Order of Magnitude Estimate by Contractor of any related Contract Adjustments extending the Contract Time; and

(3) if such circumstances involve a right to a Contract Adjustment to the Contract Price for Compensable Change that has not been waived by Contractor, Contractor shall include, if not previously provided, a complete and timely Notice of Change.

.4 WAIVER BY CONTRACTOR.

FAILURE BY CONTRACTOR TO PROVIDE A COMPLETE AND TIMELY NOTICE OF DELAY UNDER CIRCUMSTANCES WHERE A NOTICE OF DELAY INVOLVING A DELAY IS REQUIRED BY THIS PARAGRAPH 8.2.2 SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.6 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH DELAY.

.5 No County Notice. Failure by Contractor to submit a timely or proper Notice of Delay under circumstances in which a Notice of Delay is required shall in no way affect County's right to a Contract Adjustment shortening the Contract Time on account of such circumstances.

8.2.3 Request for Extension.

.1 Submission. With respect to any matter that may involve or require an adjustment extending the Contract Time, Contractor shall, within fourteen (14) Days after receipt by County of a Notice of Delay pursuant to Paragraph 8.2.2, above, submit to County a written Request for Extension.

.2 Form. Requests for Extension shall be provided using forms furnished by County or, if requested by County, using forms furnished by Contractor that are approved by County. Failure by County to request or approve a particular form shall not relieve Contractor of its obligation to provide Requests for Extension in a written form that complies with the requirements of this Paragraph 8.2.3.

.3 Content. Each Request for Extension in order to be considered complete shall include:

(1) a detailed description of the circumstances giving rise to the request for Contract Adjustment to the Contract Time and a Time Impact Analysis (a Request for Extension that seeks an extension for more than one Delay shall be supported by a separate Time Impact Analysis for each separate Delay); and

(2) if such circumstances involve a right to a Contract Adjustment of the Contract Price on account of Compensable Change that has not been waived by Contractor, Contractor shall include, if not previously provided, a complete and timely Change Order Request.

.4 WAIVER BY CONTRACTOR.

FAILURE BY CONTRACTOR TO PROVIDE A COMPLETE AND TIMELY REQUEST FOR EXTENSION UNDER CIRCUMSTANCES WHERE A REQUEST FOR EXTENSION INVOLVING A DELAY IS REQUIRED BY THIS PARAGRAPH 8.2.3 SHALL, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.6 OF THE GENERAL CONDITIONS, CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH DELAY.

.5 Adjustments Shortening Time. Failure by Contractor to submit a timely or proper Request for Extension under circumstances in which a Request for Extension is required shall in no way affect County's right to a Contract Adjustment shortening the Contract Time on account of such circumstances.

8.2.4 Response by County. After receipt of a timely and complete Request for Extension, County shall investigate the facts concerning the cause and extent of such Delay and, depending on whether the Request for Extension is justified, will notify Contractor of its approval or disapproval of all or a portion of Contractor's request. Extensions of time approved by County shall apply only to that portion of the Work affected by the Delay, and shall not apply to other portions of Work not so affected.

8.2.5 Formal Notice of Essence. Contractor recognizes and acknowledges that timely submission of a formal Notice of Delay and a formal Request for Extension, whether or not the circumstances of a Delay may be known to County or available to County through other means, are not mere formalities but are of crucial importance to the ability of County to promptly identify, prioritize, evaluate and mitigate the potential effects of Delay. Any forms of informal notice, whether verbal or written (including, without limitation, statements at regular job meetings or entries in monthly reports, daily logs, job meeting minutes, updated Construction Schedules or look-ahead schedules), that do not strictly comply with the formal requirements of Paragraph 8.2.2, above, and Paragraph 8.2.3, above, shall accordingly be deemed insufficient to satisfy the notice requirements of this Article 8.

8.2.6 Compensation for Delay.

.1 Compensable Delay. Contract Adjustments to the Contract Price for a Compensable Delay that involve an extension of the Contract Time shall be based, without duplication to any other Contract Adjustments to the Contract Price, on the terms of Section 3.3 of the Construction Contract. Contractor agrees to accept such right of Contract Adjustment in lieu of any other right that may exist under Applicable Laws for recovery of Losses due to Compensable Delay, whether incurred by Contractor or its Subcontractors, of any Tier.

.2 Deleted Work. The Contract Time and Contract Price shall be reduced by Contract Adjustment for Deleted Work (including, without limitation, Deleted Work associated with a termination by County of a portion of the Construction Contract or a deletion of portion of Work for the convenience of the County or due to an Event of Contractor Default) that results in a shortening of the Contract Time.

(1) Contract Time. The Contract Adjustment shortening the Contract Time for Substantial Completion shall be the number of Days that Contractor at the time of contracting would have reasonably expected to expend in performance of the Deleted Work and that, based on the Contractor's original Construction Schedule prepared on or about the time of contracting, were reasonably expected by Contractor to be critical to Substantial Completion of the Work within the Contract Time for Substantial Completion.

(2) Contract Price. The Contract Adjustment reducing the Contract Price shall be the product of (1) the number of Days that the Contract Time for Substantial Completion is shortened pursuant to preceding Clause (1) of this Subparagraph 8.2.6.2 multiplied times (2) the amount of liquidated damages set forth in Paragraph 3.3.2 of the Construction Contract, without any additional credit to County for Allowable Markups.

8.2.7 Acceleration of the Work.

.1 Due to Unexcused Delay. If County makes a Good Faith Determination based on County's observations of progress in performance of the Work by Contractor that Contractor will not achieve Substantial Completion of the Work within the Contract Time as adjusted pursuant to Paragraph 8.2.1, above, then Contractor shall, following receipt of a written request by County to accelerate, immediately respond in writing setting forth a detailed plan for accelerating the Work. All measures necessary, including working overtime, additional shifts, Saturdays, Sundays and holidays, to accelerate performance to ensure that the Work is performed within the Contract Time shall be taken by Contractor and the cost thereof shall be paid for by Contractor at Contractor's Own Expense. County may also take all other necessary measures to ensure no further Delays affect achievement of Substantial Completion and Final Completion of the Work within the Contract Time and the Contractor shall reimburse County, or County may withhold from payment due to Contractor, for Losses incurred by County in taking such measures.

.2 Due to Excusable Delay. Contractor shall have the right, exercised in its sole discretion, to accelerate performance of the Work to overcome time lost due to Excusable Delay. Such acceleration, if performed other than at the written direction of County, shall be deemed a voluntary acceleration and the cost of such accelerated performance shall be paid for by Contractor at Contractor's Own Expense. If County directs in writing that the Work be accelerated to overcome an Excusable Delay that is not concurrent with an Unexcused Delay, then Contractor shall be entitled to a Contract Adjustment to the Contract Price for such acceleration on and subject to the same terms as provided for in Subparagraph 8.2.7.3, below, in the case of an acceleration to overcome a Compensable Delay.

.3 Due to Compensable Delay. County shall have the right, exercised in its sole and absolute discretion, in lieu of granting a Contract Adjustment to the Contract Time for Compensable Delay, to direct in writing

the acceleration of the Work by Contractor in order to recapture time lost due to such Compensable Delay. County and Contractor shall endeavor prior to commencement of such acceleration to mutually agree upon the amount of compensation to be paid therefor. County shall have the right, in the absence of such an agreement, to direct in writing that Contractor accelerate. Contractor shall comply with such directive. Contractor's right to a Contract Adjustment to the Contract Price on account of such acceleration shall be limited to (1) the premium time portion of any overtime paid for labor provided by Contractor or any Subcontractor, plus (2) additional supervision costs for additional shifts of supervision provided at the Site by Contractor only (not by Subcontractors), plus (3) Allowable Markup thereon as provided in Paragraph 7.7.5, above. Except as directed by County in the manner stated in this Subparagraph 8.2.7.3, no statements, conduct or actions by County will be construed as creating an obligation on the part of County to agree to a Contract Adjustment to the Contract Price on account of any cost of overtime or other costs associated with an acceleration of the Work to recapture time lost due to Compensable Delay.

8.2.8 Concurrent Delays. For purposes of the calculations provided for in this Paragraph 8.2.8, the words "concurrent delay", "concurrently delay" or "occur concurrently" mean the portion of two or more Delays affecting the critical path to Substantial Completion that are overlapping or co-existent. Contractor's right to a Contract Adjustment of the Contract Time (pursuant to Subparagraphs 8.2.8.1, 8.2.8.2 and 8.2.8.3, below) and Contract Price (pursuant to Subparagraphs 8.2.8.4, 8.2.8.5 and 8.2.8.6, below) shall, in the case of concurrent delays, be calculated in accordance with the following:

.1 If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of Days from the commencement of the first Delay to the cessation of the Delay which ends last.

.2 If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which such Excusable Delay or Compensable Delay exceeds the number of Days of such Unexcused Delay.

.3 If an Unexcused Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which such Excusable Delay and Compensable Delay, as determined pursuant to Subparagraph 8.2.8.1, above, exceeds the number of Days of such Unexcused Delay.

.4 If an Unexcused Delay occurs concurrently with a Compensable Delay, the maximum period of time for which Contractor shall be entitled to a Contract Adjustment to the Contract Price in accordance with Section 3.3 of the Construction Contract shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Unexcused Delay.

.5 If a Compensable Delay occurs concurrently with an Excusable Delay, the maximum period of time for which Contractor shall be entitled to a Contract Adjustment to the Contract Price in accordance with Section 3.3 of the Construction Contract shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Excusable Delay.

.6 If an Unexcused Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum period of time for which Contractor shall be entitled to a Contract Adjustment to the Contract Price in accordance with Section 3.3 of the Construction Contract shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Unexcused Delay.

8.2.9 Delay Claims. Claims by Contractor relating to disputed Contract Adjustments due to Delay shall be made in accordance with applicable provisions of Section 4.3, above.

8.2.10 Exercise of County Rights. Notwithstanding any other provision of the Contract Documents to the contrary, County's exercise in accordance with the Contract Documents of any of its rights or remedies permitted by Applicable Laws or the Contract Documents in response to a failure by Contractor or any Subcontractor to comply with the Contract Documents shall not, under any circumstances, entitle Contractor to a Contract Adjustment.

**ARTICLE 9
PAYMENTS AND COMPLETION**

9.1 PAYMENT BY COUNTY

9.1.1 **Time for Payment.** County shall make payment of undisputed sums due to the Contractor upon Applications for Payment requesting Progress Payment not later than thirty (30) Days after receipt of an Application for Payment requesting Progress Payment that has been properly and timely prepared and submitted by Contractor, and approved by County, in accordance with the requirements of the Contract Documents.

9.1.2 **Not Acceptance.** No approval, inspection or use of, or payment for, the Work by County or by any person or entity acting on County's behalf shall constitute acceptance of Work that is not in accordance with the Contract Documents or a waiver of any of County's rights under the Contract Documents.

9.1.3 **Interest.** If County fails to make payment of an undisputed sum due as a Progress Payment to the Contractor as required by this Article 9, County shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of California Code of Civil Procedure §685.010. The number of Days available to the County to make payment without incurring such interest shall be reduced by the number of Days by which the County exceeds the seven (7) Day response time applicable to the County set forth in Section 9.5, below. The foregoing is the County's sole obligation with respect to payment of interest earned or accrued on an amount claimed due prior to the commencement by Contractor of legal proceedings for recovery of such amount.

9.1.4 **Disputed Payments.** Subject to Contractor's rights under Section 9.8, below, no good faith dispute or disagreement between County and Contractor with respect to the amount of any payment claimed due by Contractor shall relieve or excuse Contractor from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work.

9.2 APPLICATIONS FOR PAYMENTS

9.2.1 **Submission by Contractor.** Applications for Payment requesting Progress Payment shall be properly prepared and submitted by Contractor to County once a month on the twenty-fifth (25th) Day of the month. If the twenty-fifth (25th) Day of the month is a weekend or Holiday, the Application for Payment shall be submitted on the next working day.

9.2.2 **Period of Application.** The period covered by each such Application for Payment requesting Progress Payment shall be not more than thirty (30) Days ending on the twenty-fifth (25th) Day of the month in which such Application for Payment is submitted.

9.2.3 **Schedule of Values.** Each Application for Payment shall be accompanied by a Schedule of Values prepared and submitted in accordance with the requirements of the Contract Documents, including, without limitation, the provisions of Section 9.3, below.

9.2.4 **Changes in Work.** Applications for Payment may include requests for payment on account of Compensable Changes in the Work which have been properly authorized by Change Order or Unilateral Change Order.

9.2.5 **Progress Payments.** Applications for Payment requesting Progress Payments shall be based on amounts calculated in accordance with the provisions of Section 9.4, below.

9.2.6 **Percentage Completion.** Applications for Payment requesting Progress Payments shall indicate the Contractor's estimate of the percentage of completion of each line item listed in the Schedule of Values as of the end of the period covered by the Application for Payment.

9.2.7 **Projected Work.** Unless approved by County in writing in advance of an Application for Payment being submitted, which approval may be granted or denied in the sole and absolute discretion of County, Applications for Payment shall only include amounts for Work performed to the twenty-fifth (25th) Day of the month in which the

Application for Payment was submitted and shall not include request for payment of amounts for Work projected to be performed, stored or delivered beyond that date.

9.2.8 Disagreements. In the event of a disagreement between County and Contractor over the accuracy or reasonableness of the Contractor's statement of percentage of progress achieved that is contained in the Application for Payment, the County shall make a Good Faith Determination of the percentage, which percentage shall then be inserted by Contractor in the Application for Payment and the Application for Payment submitted, or resubmitted, incorporating such revision.

9.2.9 Substantial Completion. For the sole purpose of the percentage calculation set forth in Paragraph 9.2.6, above, and for no other purpose, the Work shall be deemed one hundred percent complete upon Substantial Completion and the amount released to Contractor shall, subject to County's right to withhold pursuant to Section 9.6, below, be a sum sufficient to increase the total of Progress Payments to Contractor to ninety-five percent (95%) of the Contract Price.

9.2.10 Certification by Contractor. Each Application for Payment that is submitted by Contractor shall be signed by Contractor with a certification by Contractor to County that: (1) the data comprising the Application for Payment is accurate and the Work has progressed to the point indicated; (2) to the best of Contractor's knowledge, information and belief, the Work is in accordance with the Contract Documents; (3) Contractor is entitled to payment in the amount certified; and (4) all sums previously applied for by Contractor on account of the Work performed by the Subcontractors and that have been paid by County have been paid to the Subcontractors performing such Work, without any retention, withholding or back charge by Contractor.

9.2.11 Stored Materials. County may, in the exercise of its sole and absolute discretion, approve or disapprove for inclusion in Contractor's Application for Payment the cost of materials to be incorporated, but not yet incorporated, in the Work and delivered and suitably stored either at the Site or at some other appropriate location acceptable to the County. As part of any request for such approval, Contractor shall furnish evidence satisfactory to County: (1) of the cost of such materials; (2) that such materials are under the exclusive control of Contractor, or if not, that title to the materials is in the County, free of any lien or encumbrance; and (3) with respect to materials stored off-Site, that the materials are safely and suitably stored in a bonded warehouse with appropriate insurance coverage satisfactory to County. No payment or approval by County pursuant to this Paragraph 9.2.11 shall (a) be construed as an inspection or acceptance of the materials; (b) relieve Contractor of its continuing and sole responsibility for the care and protection of, and sole responsibility for any Loss to, such materials, from any cause whatsoever; or (c) operate as a waiver of rights by County.

9.2.12 Title. Contractor warrants that title to all the Work covered by an Application for Payment will pass to County no later than the time of payment. Contractor further warrants that upon submittal of an Application for Payment all Work for which approval for payment has been previously issued by County shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, the Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials or equipment for the Work.

9.3 SCHEDULE OF VALUES

9.3.1 Initial Submission. Within twenty-one (21) Days after issuance by County of the Notice of Intent to Award, Contractor shall submit to County a Schedule of Values, prepared in a form and incorporating a level of detail satisfactory to County, that allocates the Contract Price to various portions of the Work, including, without limitation, each portion of the Work to be performed by a Subcontractor, self-performed Work, discrete categories of direct (i.e., on-Site) overhead costs (sometimes referred to as "general conditions costs"), Contractor home office and indirect overhead and profit and amounts reserved for contingencies.

9.3.2 Balanced Allocation. The Schedule of Values shall be balanced, reflecting in each line item Contractor's estimated or actual cost commitments for the category of Work included in the line item and a proportionate share of Contractor's overhead and profit. Techniques, such as "front-end loading", designed to create an imbalanced cash flow are strictly prohibited.

9.3.3 Line Estimates. Line item values stated in the Schedule of Values that are based on Contractor's estimates, rather than actual subcontract prices, shall be identified as such and replaced with actual subcontract prices when they become available as the subcontracting process progresses.

9.3.4 Updating. The Schedule of Values shall be updated by Contractor each month as necessary to reflect the Contractor's actual progress in subcontracting the Work. An updated Schedule of Values shall be attached to each Application for Payment.

9.3.5 Substantiation. Contractor shall provide such data as County may reasonably require to substantiate that the Schedule of Values has been prepared in conformance with the requirements of the Contract Documents. Failure to provide such substantiation shall result in the Schedule of Values being deemed incomplete and unapproved by County for use by Contractor in submitting its Applications for Payment.

9.3.6 Corrections. If corrections are required in order to make the Schedule of Values comply with the requirements of the Contract Documents, such corrections shall be made as a condition of the Contractor's Application for Payment being considered properly prepared, submitted and complete.

9.3.7 Changes to Work. Costs involved in the performance of Work covered by Change Orders, Unilateral Change Orders or Construction Change Directives shall be, at the option of County, either separately scheduled or incorporated as adjustments to the respective trade lines of Work to which they apply. Except as otherwise expressly required by Article 7, above, the Schedule of Values shall not be utilized by Contractor as a basis for calculating Contract Adjustments.

9.3.8 Applications for Payment. The Schedule of Values prepared by Contractor in accordance with the requirements of the Contract Documents shall be used as a basis for County's review and approval or disapproval of Applications for Payment.

9.4 PROGRESS PAYMENT CONDITIONS

9.4.1 Progress Payment Amount. Subject to the other provisions of the Contract Documents, the amount of each Progress Payment requested in an Application for Payment shall be computed as follows:

.1 take that portion of the Contract Price properly allocable to Work (other than materials, products or equipment furnished by County) permanently incorporated at the Site as part of the Work, based on the product derived by multiplying (1) the percentage completion of each such portion of the Work times (2) the portion of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less a retention of five percent (5%) thereof;

.2 add that portion of the Contract Price that is allocable to materials and equipment (other than materials, products or equipment furnished by County) approved by County pursuant to Paragraph 9.2.11, above, and suitably stored at the Site or at a location off-Site, less a retention of five percent (5%) thereof;

.3 subtract the aggregate of previous payments made by the County; and

.4 subtract amounts, if any, that County has determined will be withheld pursuant to an exercise of the County's right to withhold pursuant to Section 9.6, below.

9.4.2 Other Conditions and Documentation. Contractor shall submit its Applications for Payment requesting Progress Payments to County using such forms as required by County. Without limitation to any other conditions to payment set forth elsewhere in the Contract Documents, the following shall be conditions precedent to a proper submission, and to County's approval, of each Application for Payment:

.1 submission of a Schedule of Values that complies with Section 9.3, above;

.2 submission of Contractor's certification required by Paragraph 9.2.10, above;

.3 submission of: (1) forms of conditional releases of stop payment notice and bond rights upon progress payment, complying with California Civil Code §8132, for all Work performed during the time period covered by the current Application for Payment, signed by Contractor and the Subcontractors, of every Tier; and (2) forms of unconditional releases of stop payment notice and bond rights upon progress payment, complying with California Civil Code §8134, for all Work performed during the time period covered by the previous Application for Payment, signed by Contractor and the Subcontractors, of every Tier;

.4 compliance by Contractor with its obligation for daily maintenance of Record Drawings and Specifications as required by Paragraph 3.10.1, above;

.5 compliance by Contractor with its obligation for submission of daily reports as required by Paragraph 3.10.2, above;

.6 compliance by Contractor with its obligations for submission of scheduling information and updating of the Construction Schedule as required by Section 3.9, above, and other provisions of the Contract Documents pertaining to preparation or updating of schedules and scheduling information;

.7 proper payment of prevailing wages as defined in California Labor Code §1720, et seq.;

.8 timely submission of adequate and complete certified payroll records for any time period that Work was performed and for which payment is being requested;

.9 submission of certifications by Contractor and the Subcontractors as required by Applicable Laws certifying that all employee benefit contributions due and owing have been paid in full;

.10 submission of sales tax information as required by Paragraph 3.6.3, above; and

.11 compliance by Contractor with all of its other obligations for submission of documentation or performance of conditions which, by the terms of the Contract Documents, constitute conditions to Contractor's right to receive payment for Work performed.

9.5 COUNTY APPROVAL/REJECTION OF APPLICATIONS FOR PAYMENT

9.5.1 **Review by County.** Subject to County's rights under Paragraph 9.5.4, below, County shall promptly review Applications for Payment submitted by Contractor and provide its approval or disapproval, in whole or part, within (1) seven (7) Days after receipt of an Application for Payment requesting Progress Payment, and (2) within fourteen (14) Days after receipt of an Application for Payment requesting Final Payment.

9.5.2 **Disapproval by County.** Disapproval by County disapproving of an Application for Payment shall be accompanied by an explanation of the reasons for such disapproval. Failure by County to specify in its disapproval a particular grounds for disapproval of an Application for Payment shall not waive the County's right to assert such grounds as a basis for any future disapproval, or nullification of its prior approval, of that or any other Application for Payment.

9.5.3 **Re-submittal by Contractor.** An Application for Payment that is disapproved by County shall be corrected and re-submitted by Contractor after receipt by Contractor of the notice of disapproval. A re-submitted Application for Payment shall be reviewed and responded to by County in the same manner as provided in Paragraphs 9.5.1 and 9.5.2, above. If re-submitted, the re-submitted Application for Payment shall be reviewed and responded to by County in the same manner as provided in Paragraph 9.5.1 and Paragraph 9.5.2, above. If not re-submitted, only the amount, if any, that is approved for payment shall be paid until such time as a proper Application for Payment that includes the disapproved amount has been submitted in another Application for Payment and, upon such re-submittal, approved for payment.

9.5.4 **Approval Nullification.** County reserves the right to nullify any prior approval of an Application for Payment that is later found to not be in compliance with the requirements of the Contract Documents, whether or not such noncompliance was previously actually observed or apparent on the face of the Application for Payment, and

based on such nullification County may take either of the following actions, as applicable: (1) if the Application for Payment has not yet been paid by County, disapprove of that portion of the Application for Payment that is not in compliance and withhold payment of that sum until the noncompliance is fully rectified; or (2) if the Application for Payment has been paid by County, nullify the County's prior approval and withhold payment of such disputed amounts in response to future Applications for Payment; provided, however, that in either case the amount of the County's nullification shall be limited to that portion of the amount requested in the Application for Payment that is in dispute and the amount of its withholding from the current or any future Application for Payment shall be limited to the amount nullified plus any additional withholding permitted under Section 9.6, below.

9.5.5 No Waiver by County. Neither approval by County or Architect of, failure by County to exercise its right of nullification with respect to, nor payment by County upon, an Application for Payment or any portion thereof shall be interpreted as or constitute a waiver or release of any of County's rights to require Contractor's full compliance with the Contract Documents.

9.5.6 No Representation. Neither approval by County or Architect of, failure by County to exercise its right of nullification with respect to, nor payment by County upon, an Application for Payment or any portion thereof shall be interpreted as a representation that County or Architect has: (1) made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work, (2) reviewed Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from the Subcontractors and other data requested by County or Architect to substantiate Contractor's right to payment, or (4) made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Price.

9.6 WITHHOLDING OF PAYMENT

9.6.1 Grounds for Withholding. County may decline to approve an Application for Payment and withhold payment requested under any unpaid Application for Payment, in whole or in part, to such extent that County makes a Good Faith Determination that withholding is necessary, in the sole discretion of County, because of any of the following circumstances:

.1 Third-Party Claims. Third-party claims or stop payment notices filed or reasonable evidence (including, without limitation, failure by Contractor to submit conditional releases of stop payment notice and bond rights required by the Contract Documents) indicating the possible filing of such claims or stop payment notices.

.2 Defective Work. Defective Work not remedied.

.3 Nonpayment. Failure of Contractor to make proper payments to a Subcontractor for services, labor, materials or equipment or other Work.

.4 Inability to Complete. Reasonable doubt that the Work can be completed for the then unpaid balance of the Contract Price or within the Contract Time.

.5 Violation of Applicable Laws. Failure of Contractor or a Subcontractor to comply with Applicable Laws.

.6 Penalty. Any penalty asserted against County by virtue of Contractor's failure to comply with Applicable Laws.

.7 Lack of Progress. Failure by Contractor to maintain progress in accordance with the Construction Schedule.

.8 Setoff. Any reason specified elsewhere in the Contract Documents as grounds for a withholding, offset or setoff or that would legally entitle County to a setoff or recoupment.

.9 Consultant Services. Additional professional, consultant or inspection services required due to Contractor's failure to comply with the Contract Documents.

.10 Liquidated Damages. Liquidated damages payable to County pursuant to Section 3.2 of the Construction Contract or that there is a reasonable basis to believe will be payable to County based upon the Contractor's project date for Substantial Completion based on its update Construction Schedule or based upon other evidence available to County of the probable date that the Work will be Substantially Completed.

.11 Damage. Loss caused to County, a Separate Contractor or any other person or entity under contract to County, by Contractor or a Subcontractor.

.12 Cleanup. Cleanup performed by County and chargeable to Contractor pursuant to the terms of the Contract Documents.

.13 Employee Benefits. Failure of Contractor to pay contributions due and owing to employee benefits funds pursuant to any applicable collective bargaining agreement or trust agreement.

.14 Required Documents. Failure of Contractor to submit on a timely basis, proper and complete documentation required by the Contract Documents, including, without limitation, schedule updates, 'look ahead' schedules, pricing information, certifications and other required reports or documentation.

.15 Labor Compliance. Failure of Contractor or any Subcontractor to properly pay prevailing wages as defined in California Labor Code §§1720 et seq.

.16 Nullification. Nullification by County pursuant to Paragraph 9.5.4, above, of its prior approval of an Application for Payment.

.17 Releases. Failure by Contractor to submit any conditional release of stop payment notice and bond rights that is required pursuant to Subparagraph 9.4.2.3, above or Subparagraph 9.10.4.4, below.

.18 Other Breach. A breach by Contractor of any obligation or provision of the Contract Documents.

9.6.2 Application of Withholding. Sums properly withheld pursuant to Paragraph 9.6.1, above, may be used by County without a prior judicial determination of County's actual rights with respect to the grounds on which such withholding is based. Contractor agrees and hereby designates County as its agent for such purposes, and agrees that such payments shall be considered as payments made under the Construction Contract by County to Contractor. County shall submit to Contractor an accounting of such funds disbursed on behalf of Contractor. As an alternative to such payment, County may, in its sole and absolute discretion, elect to exercise its right to adjust the Contract Price as provided in Section 13.4, below.

9.6.3 Final Payment. In accordance with California Public Contract Code §7107, the amount to be withheld from Contractor's Final Payment pursuant to a withholding asserted pursuant to Paragraph 9.6.1, above, shall be limited to one hundred fifty percent (150%) of the disputed amount.

9.6.4 Release of Withholding. When the reasons for withholding of payment as set forth in Paragraph 9.6.1, above, are removed, approval by County will be promptly issued to Contractor for amounts previously withheld and payment of amounts withheld will be made by County within thirty (30) Days thereafter.

9.6.5 Additional Rights. The County's right of withholding set forth in this Section 9.6 is in addition to, and not a limitation upon, any other rights of withhold that County may have under the Contract Documents or Applicable Laws.

9.7 PAYMENTS BY CONTRACTOR

9.7.1 Payments to Subcontractors. Contractor shall not include in its Applications for Payment sums on account of any Subcontractor's portion of the Work that it does not intend to pay to such Subcontractor. Upon receipt of payment from County, Contractor shall pay the Subcontractors performing the Work, out of the amount paid to Contractor on account of such Subcontractors' portions of the Work, the amount to which said Subcontractors are

entitled in accordance with the terms of their contracts with Contractor and Applicable Laws, including, without limitation, California Public Contract Code §7107. Contractor shall remain responsible, notwithstanding a withholding by County pursuant to the terms of these General Conditions, to promptly satisfy from its own funds sums due to all the Subcontractors who have performed the Work that is included in Contractor's Application for Payment. Contractor shall, by appropriate agreement, require each Subcontractor to make payments to its sub-subcontractors and suppliers in similar manner. County shall have no obligation to pay or be responsible in any way for payment to the Subcontractors, of any Tier.

9.7.2 Payments in Trust. Any funds that Contractor receives in payment for services or Work performed by a Subcontractor shall constitute assets of a trust, which trust funds shall be used for the exclusive benefit of the Subcontractor for the purpose of discharging Contractor's financial obligations on account of labor, services, materials or equipment furnished to the Project by the Subcontractor, provided that such labor, services, materials or equipment were performed in accordance with the Contract Documents, were included in an Application for Payment to County, and were paid by the County to Contractor. Contractor shall be the trustee of the trust and shall be required to deal with the trust assets for the benefit of the Subcontractor. Contractor shall not be a beneficiary of the trust. Nothing herein shall be construed as an intent to require that Contractor maintain trust funds in separate bank accounts, specifically designate any third party as a beneficiary of the trust created herein, or otherwise give rise to any cause of action against the County by any third party beneficiary of the trust created herein.

9.7.3 Payment Information. County will, on request, furnish to any of the Subcontractors, if practicable, information for such Subcontractor's review regarding percentages of completion or amounts applied for by Contractor and action taken thereon by County on account of portions of the Work done by such Subcontractor.

9.7.4 Joint Payment. County shall have the right, if deemed necessary in its sole discretion, to issue joint checks made payable to Contractor and any of the Subcontractors, of any Tier. The joint check payees shall be solely responsible for the allocation and disbursement of funds included as part of any such joint payment. Endorsement on such check by a payee shall be conclusively presumed to constitute receipt of payment by such payee. In no event shall any joint check payment be construed to create: (1) any contract between County and any of the Subcontractors, of any Tier; (2) any obligation from County to any of the Subcontractors; or (3) any third-party rights against County or Architect.

9.7.5 Direct Negotiation of Stop Payment Notices. County shall have the right to directly discuss, negotiate, settle or pay, without notice to or participation by Contractor, any stop payment notice claims asserted by the Subcontractors, of any Tier, and to deduct such sums paid from sums due to Contractor.

9.7.6 Release of Stop Payment Notices. With the exception of that portion, and only that portion, of a stop payment notice or other claim that arises as a result of a failure by the County to make payment to Contractor under circumstances constituting a breach of the Construction Contract by County, if any stop payment notice or other claim, whether invalid or valid, is filed with, served upon or made or asserted against the County or the Site by any Subcontractor, of any Tier, or their agent or employee, for money claimed due, then Contractor shall within five (5) Days after written notice by the County procure, furnish and record appropriate releases or other instruments which under Applicable Laws will fully release, extinguish and remove such stop payment notice or claim, as well as any notices of pending action or other notices recorded against the Site in connection with the enforcement thereof. All costs of such actions by Contractor shall be paid for by Contractor at Contractor's Own Expense. Unless and until fully released as aforesaid, the County shall have the right to retain from any payment then due, or thereafter to become due, to Contractor an amount equal to one hundred and fifty percent (150%) of the amount necessary to satisfy, discharge and defend against any such stop payment notice or claim and any action or proceeding thereon, including, without limitation, an amount for anticipated attorney's fees and costs. If the amount to be paid, or the amount retained, is insufficient to satisfy, discharge and defend against any such stop payment notice or claim and any action or proceeding thereon, then Contractor shall be liable for the difference and upon demand shall immediately deposit the same with the County. The provisions of this Paragraph 9.7.6 are in addition to such other rights as the County may have against Contractor under the Contract Documents or Applicable Laws.

9.7.7 No County Obligation. Neither County nor Architect shall have any obligation to pay or to see to the payment of money to any of the Subcontractors except as may otherwise be required by Applicable Laws.

9.8 FAILURE OF PAYMENT

If, through no fault of Contractor or failure by Contractor to comply with its obligations under the Contract Documents either: (1) approval or disapproval by County of an Application for Payment properly prepared and submitted by Contractor and requesting payment that is otherwise undisputed by County is not issued within the time period required therefor by the terms of this Article 9; or (2) the County does not (a) upon an Application for Payment properly prepared and submitted by Contractor pay to Contractor, within the time period required for payment by County, an undisputed amount approved by County as earned, which approval has not been, and is not thereafter, nullified by County, or (b) pay to Contractor an amount that has been awarded by arbitration or judgment of a court of competent jurisdiction, then Contractor may, following delivery to County of a written "10-day stop work order", stop the Work until, as applicable, an approval or disapproval by County, or payment by County, is received by Contractor. Promptly upon receipt of such approval or disapproval, or payment, as applicable, Contractor shall resume the Work. Any resulting Delay associated with the shut down and start up of the Work as a result of Contractor's proper exercise of its right to stop work under this Section 9.8 shall constitute a Compensable Delay.

9.9 SUBSTITUTION OF SECURITIES FOR RETENTION

9.9.1 **Public Contract Code.** Pursuant to the requirements of California Public Contract Code §22300, upon the Contractor's request, the County will make payment to the Contractor of any funds withheld from payments to ensure performance under the Contract Documents if the Contractor deposits with the County, or in escrow with a California or federally chartered bank in California acceptable to the County ("Escrow Agent"), securities eligible for the investment of State Funds under Government Code §16430, or bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the County, upon the following conditions:

.1 The Contractor shall be the beneficial owner of any securities substituted for monies withheld for the purpose of receiving any interest on such securities.

.2 All expenses relating to the substitution of securities under said §22300 and under this Section 9.9, including, but not limited to the County's overhead and administrative expenses and expenses of Escrow Agent, shall be the responsibility of the Contractor.

.3 Securities or certificates of deposit substituted for monies withheld shall be of a value of at least equivalent to the amounts of the retention to be paid to the Contractor pursuant to the Contract Documents.

.4 If the Contractor shall choose to deposit securities in lieu of monies withheld with an Escrow Agent, the Contractor, the County and Escrow Agent shall, as a prerequisite to such deposit, enter into an escrow agreement. Such escrow agreement shall be substantially in the form "Escrow Agreement for Security Deposits in Lieu of Retention" set forth in California Public Contract Code §22300(f).

.5 The Contractor shall obtain the written consent of Surety to such agreement.

.6 Securities, if any, shall be returned to the Contractor only upon satisfactory Final Completion of the Work.

9.9.2 **Substitute Security.** To minimize the expense caused by such substitution of securities, the Contractor shall, prior to or at the time the Contractor requests to substitute security, deposit sufficient security to cover the entire amount to be withheld. Should the current market value of such substituted security at any time fall below the amount for which it was substituted, or any other amount which the County withholds pursuant to the Contract Documents, the Contractor shall immediately and at the Contractor's Own Expense deposit additional security qualifying under said §22300 until the current market value of the total security deposited is no less than the amount subject to withholding under the Contract Documents. Securities shall be valued as often as conditions of the securities market warrant, but in no case less frequently than once per month.

9.9.3 **Deposit of Retentions.** Alternatively, subject to the conditions set forth in Paragraph 9.9.1, above, upon request of the Contractor, the County shall make payment of retentions directly to Escrow Agent at the expense of the Contractor, provided that the Contractor, the County and Escrow Agent shall, as a prerequisite to such

payment, enter into an escrow agreement in the same form as prescribed in Subparagraph 9.9.1.4, above. At the Contractor's Own Expense, the Contractor may direct the investment of the payments into securities and interest bearing accounts and the Contractor shall receive the interest earned on the investments. Escrow Agent shall hold such direct payments by the County under the same terms provided herein for securities deposited by the Contractor. Upon satisfactory Final Completion of the Work, the Contractor shall receive from Escrow Agent all securities, interest and payments received by Escrow Agent from the County, less escrow fees and charges of the Escrow Account, according to the terms of said §22300 and the Contract Documents.

9.10 FINAL PAYMENT

9.10.1 **Payment by County.** Subject to the County's right of withholding as set forth in Section 9.6, above, or elsewhere in the Contract Documents, Final Payment shall be made by County not more than sixty (60) Days after completion of the Work as defined in Clauses (1), (2), (3) or (4) of California Public Contract Code § 7107(c), whichever definition is earliest satisfied.

9.10.2 **Application for Final Payment.** Upon issuance by County of the Notice of Final Completion pursuant to Paragraph 9.13.5, below, Contractor shall submit to County its Application for Payment requesting Final Payment.

9.10.3 **Review by County.** County will review and approve or disapprove of the Application for Payment requesting Final Payment as provided in Section 9.5, above.

9.10.4 **Conditions to Final Payment.** Without limitation to any other conditions to payment set forth elsewhere in the Contract Documents, the following shall be conditions to a proper submission, and to County's approval, of Contractor's Application for Payment requesting Final Payment:

- .1 submission of Contractor certification as required by Paragraph 9.2.10, above;
- .2 submission of consent of Surety, if any, to Final Payment;
- .3 submission of a certificate evidencing that the insurance required by the Contract Documents is in force;
- .4 submission of conditional releases and waivers of stop payment notice and bond rights upon final payment in the form required by California Civil Code §8136 executed by Contractor and by all the Subcontractors, of every Tier;
- .5 submission of all Close-Out Documents (including, without limitation, complete, accurate Record Drawings and Specifications certified by Contractor as required by Paragraph 3.10.1, above);
- .6 timely submission of adequate and complete certified payroll records for any time period that Work was performed, which have not been submitted by Contractor in connection with its previous Applications for Payment;
- .7 proper payment of prevailing wages as defined in California Labor Code §§1720, et seq.;
- .8 submission of certifications by Contractor and each Subcontractor, as required by any applicable collective bargaining agreement or trust agreement or Applicable Laws, certifying that all employee benefit contributions due and owing have been paid in full; and
- .9 submission of any other documents or information required by the Contract Documents as a condition of Final Payment or Final Completion.

9.10.5 **Disputed Amounts.** Pursuant to California Public Contract Code § 7107, County may deduct and withhold from Final Payment an amount of up to one hundred fifty percent (150%) of any disputed amounts, including,

without limitation, amounts to protect County against any Loss caused or threatened as a result of Contractor's failing to fully satisfy the conditions of Final Completion and Final Payment.

9.10.6 No Waiver by County. The making of Final Payment by County shall not constitute a waiver by County of any rights or claims, including, without limitation, any right or claim for reimbursement of Allowable Costs or Allowable Markup paid to Contractor that is determined by County, either before or after Final Payment, to have been not due to Contractor.

9.10.7 WAIVER BY CONTRACTOR.

ACCEPTANCE OF FINAL PAYMENT BY CONTRACTOR OR A SUBCONTRACTOR SHALL CONSTITUTE A WAIVER OF ALL RIGHTS BY THAT PAYEE AGAINST COUNTY FOR RECOVERY OF ANY LOSS, EXCEPTING ONLY THOSE CLAIMS THAT HAVE BEEN SUBMITTED BY CONTRACTOR IN THE MANNER REQUIRED BY SECTION 4.3, ABOVE, PRIOR TO, OR AT THE TIME OF CONTRACTOR'S SUBMISSION TO COUNTY OF, ITS APPLICATION FOR PAYMENT REQUESTING FINAL PAYMENT.

9.11 SUBSTANTIAL COMPLETION

9.11.1 Contract Time. Contractor shall achieve Substantial Completion of the Work, or such portion of the Work as may be designated at any time by County for separate delivery, in accordance with the requirements of the Contract Time and other provisions of the Contract Documents.

9.11.2 Request for Inspection. Contractor shall notify the County when Contractor believes that the Work, or portion thereof designated by the County in the Contract Documents or otherwise for separate delivery, is Substantially Complete.

9.11.3 Substantial Completion Inspection. When Contractor gives notice to County that it has achieved Substantial Completion of the Work, or a County designated portion thereof, unless the County determines that the Work or County designated portion thereof is not sufficiently complete to warrant an inspection to determine Substantial Completion, County, Inspector of Record, Architect and such others as may be designated by County will inspect the Work, or such County designated portion thereof.

9.11.4 Substantial Completion Punch List. At the conclusion of such inspection, County shall prepare and give to Contractor (or, Owner may request that Contractor prepare and provide to County) a Substantial Completion Punch List of items, if any, to be completed or corrected for Substantial Completion. If Contractor disputes any of the items included, it shall so note its objection on the Substantial Completion Punch List. Contractor shall proceed within forty-eight (48) hours after preparation of the Substantial Completion Punch List to commence correction or completion of the items on the Substantial Completion Punch List, including, without limitation, any disputed items, and all such items of Work shall be completed promptly by Contractor before the Work will be considered as Substantially Complete. Failure by County, Architect, Inspector of Record or Contractor to include an item on the Substantial Completion Punch List does not alter the responsibility of Contractor to perform the Work in accordance with the Contract Documents. Items of Work necessary for Substantial Completion that, for any reason, have been omitted from the Substantial Completion Punch List shall be added to the Substantial Completion Punch List and Contractor shall, at the request of County, Architect or Inspector of Record made at any time prior to Final Payment commence correction or completion of such items within forty-eight (48) hours and all such items of Work shall be completed by Contractor promptly and before the Work will be considered as Substantially Complete.

9.11.5 Re-Inspection. Contractor shall notify County when the items of Work shown on the Substantial Completion Punch List are completed. County, Inspector of Record, Architect and such others as County deems necessary or appropriate will then make a further inspection to determine whether such Work is Substantially Complete. If such inspection, or any subsequent re-inspection required pursuant hereto, discloses any item, whether or not included on the Substantial Completion Punch List, which must be completed or corrected before Substantial Completion, Contractor shall, as a condition of Substantial Completion, complete or correct such item, which shall then be re-inspected to confirm that such Work is Substantially Complete. Contractor shall reimburse County, or County may at its option withhold from Contractor's payments, amounts incurred by County to the Inspector of Record, Architect, County Consultants or others whose services, for reasons within the control or responsibility of

Contractor or the Subcontractors, are necessary for more than two (2) such re-inspections to determine Substantial Completion.

9.11.6 Notice of Substantial Completion. When County determines that the Work, or such designated portion thereof, is Substantially Complete, County will prepare a Notice of Substantial Completion on the County's form, which shall state the date of Substantial Completion. If the Notice of Substantial Completion is for the entire Work, then the County will attach to it the Final Completion Punch List prepared in accordance with Paragraph 9.13.2, below. Regardless of the date the Notice of Substantial Completion is issued, Substantial Completion shall be deemed to have occurred on the date stated in the Notice of Substantial Completion.

9.12 PARTIAL OCCUPANCY OR USE

County reserves the right to beneficially occupy all or any portion of the Work at any time before Substantial Completion of the entire Work. Beneficial occupancy means that County has assumed physical occupancy and use of all or such portion of the Work. Commencement of improvements or other work by Separate Contractors in order to ready the Work for use or occupancy by County shall be unconditionally permitted in all cases prior to Substantial Completion and shall not constitute a taking of beneficial occupancy by County. Exercise by County in accordance with the provisions of this Section 9.12 of its right to take beneficial occupancy shall not constitute grounds for a Contract Adjustment. The County's right of beneficial occupancy of all or a portion of the Work prior to Substantial Completion shall be subject to the following conditions:

9.12.1 County and such others as County deems necessary will make an inspection of the portion of the Work to be beneficially occupied and prepare a list of items to be completed or corrected in the same manner as required by and subject to the same conditions as set forth in Section 9.11, above.

9.12.2 Beneficial occupancy by County shall not be construed as Acceptance of that portion of the Work which is to be occupied.

9.12.3 Except as otherwise provided in this Section 9.12, beneficial occupancy by County shall not constitute a waiver of rights of the County against Contractor. Notwithstanding anything stated in this Section 9.12 or elsewhere in the Contract Documents to the contrary, beneficial occupancy by County shall not constitute a waiver of rights of County relating to Defective Work in the area beneficially occupied or in any other portion of the Work.

9.12.4 Prior to the County's taking beneficial occupancy, Contractor shall submit to County an itemized list of each piece of equipment located in or serving the area to be occupied stating the date operation of such piece of equipment commenced, together with operating instructions, manuals and other information required by the Contract Documents. Contractor shall provide, in the areas beneficially occupied, on a continual basis, utility services, elevator service, and heating and cooling systems in operable condition commencing at the time of beneficial occupancy and until Final Completion of the entire Work. County shall be responsible, from and after taking occupancy, for utility consumption, regular operation and regular maintenance of such systems or equipment.

9.12.5 County shall pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.

9.12.6 County shall pay all utility costs that arise out of its beneficial occupancy.

9.12.7 Contractor shall not be responsible for providing security in areas beneficially occupied.

9.12.8 County shall use its best efforts to prevent its beneficial occupancy from interfering with the conduct of Contractor's remaining Work.

9.12.9 Contractor shall not be required to repair damage caused solely by County's beneficial occupancy.

9.12.10 Contractor shall continue to maintain all insurance required by the Contract Documents in full force and effect.

9.13 FINAL COMPLETION

9.13.1 **Contract Time.** Contractor shall expeditiously and diligently perform the Work after Substantial Completion, including, without limitation, all items of Work on the Final Completion Punch List that accompanies the Notice of Substantial Completion, so as to achieve Final Completion within the requirements of the Contract Time for Final Completion.

9.13.2 **Final Completion Punch List.** Contractor shall prepare and submit to County at the time that Contractor requests inspection for Substantial Completion of the entire Work pursuant to Paragraph 9.11.2, above, a draft proposed Final Completion Punch List of items of Work that will be required to be completed or corrected for Final Completion. Items identified in the course of any inspection for Substantial Completion that are required to Finally Complete the Work following Substantial Completion shall be added to the proposed Final Completion Punch List and the revised Final Completion Punch List attached to the Notice of Substantial Completion. If Contractor disputes any of the items included, it shall so note its objection on the Final Completion Punch List. When Contractor considers the Final Completion Punch List to be complete, it shall promptly sign and deliver the Final Completion Punch List to the County. Failure by County, Architect, Inspector of Record or Contractor to include an item on the Final Completion Punch List does not alter the responsibility of Contractor to perform the Work in accordance with the Contract Documents. Items of Work necessary for Final Completion that, for any reason, have been omitted from the Final Completion Punch List shall be added to the Final Completion Punch List upon request by the County made at any time prior to Final Payment and completion of such items shall be made promptly and before the Work will be considered Finally Complete.

9.13.3 **Performance of Punch List.** Contractor shall proceed promptly and in accordance with the Contract Time to correct and complete the items on the Final Completion Punch List, including, without limitation, any disputed items, and all such items of Work shall be completed by Contractor before the Work will be considered as Finally Complete.

9.13.4 **Request for Final Inspection.** Contractor shall notify County when Contractor believes that the Work is Finally Complete. County, Inspector of Record, Architect and such others as County deems necessary or appropriate will then make a further inspection to determine whether such Work is Finally Complete. If such inspection, or any subsequent re-inspection required pursuant hereto, discloses any item, whether or not included on the Final Completion Punch List, which must be completed or corrected before Final Completion, Contractor shall, as a condition of Final Completion, complete or correct such item, which shall then be re-inspected to confirm that such Work is Finally Completed. Contractor shall reimburse County, or County may at its option withhold from Contractor's payments, amounts incurred by County to the Inspector of Record, Architect, County Consultants or others whose services, for reasons within the control or responsibility of Contractor or the Subcontractors, are necessary for more than two (2) inspections to determine Final Completion.

9.13.5 **Notice of Final Completion.** When County determines that the Work is Finally Complete, County will prepare a Notice of Final Completion on the County's form, which shall state the date of Final Completion. Regardless of the date the Notice of Final Completion is issued, Final Completion shall be deemed to have occurred on the date stated in the Notice of Final Completion.

9.13.6 **Acceptance by County.** Acceptance may be exercised by County, in its sole and absolute discretion, either after Final Completion or, without waiving or releasing Contractor from any of its obligations under the Contract Documents, at any time after Substantial Completion and prior to Final Completion.

9.13.7 **Notice of Completion.** In addition to issuance of the Notice of Substantial Completion and Notice of Final Completion, County shall have the right, exercised in its sole and absolute discretion, to record a Notice of Completion pursuant to California Civil Code §9204.

9.13.8 **No Waiver by County.** No inspections conducted pursuant to this Article 9 nor any approvals or certificates issued by County, Architect or Inspector of Record shall be deemed to be a waiver or limitation on County's right to insist on Final Completion and full performance of all other conditions to Final Payment under the Contract Documents prior to issuance of Final Payment to Contractor.

ARTICLE 10
INSPECTIONS, SAFETY AND HAZARDOUS SUBSTANCES

10.1 INSPECTIONS

10.1.1 General. One or more Inspectors of Record, including special inspectors as required, may be employed by County and assigned to the Work. The fees of Inspectors of Record shall be directly paid for by County. **IF INSPECTORS OR RECORD ARE ASSIGNED TO THE WORK, THEN NO WORK SHALL BE CARRIED ON EXCEPT UNDER THE INSPECTION, AND WITH THE KNOWLEDGE, OF THE APPROPRIATE INSPECTOR(S) OF RECORD,** and Contractor shall be responsible, at Contractor's Own Expense, to remove and replace any Work performed without such inspection by the appropriate Inspector of Record.

10.1.2 Coordination. Contractor shall schedule, arrange, and coordinate its activities with the activities of the County, Inspectors of Record, Architect, County Consultants and others designated by County to inspect or observe the Work. When, in order to comply with the intent of the Contract Documents, inspection or observation must be made at the plant or mill of the manufacturer or fabricator of material or equipment, Contractor shall notify the County, as well as any other persons identified by County as assigned by it to inspect or observe the Work, a sufficient length of time in advance to allow for arrangements to be made for such inspection or observation.

10.1.3 Uncovering of Work. County or an Inspector of Record shall have the right to request that any portion of the Work be uncovered by Contractor for inspection. Except as otherwise provided in Paragraph 10.1.1, above, if such Work is found to be in accordance with the Contract Documents, then all of the additional costs incurred in uncovering, replacing and re-covering the Work shall constitute grounds for Contractor, upon proper notice and request pursuant to Article 7, above, to receive a Contract Adjustment for Compensable Change and if such uncovering, replacing and re-covering of the Work causes a Delay, such Delay shall constitute grounds for Contractor, upon proper and timely notice and request pursuant to Article 8, above, to receive a Contract Adjustment for Compensable Delay. If such Work is not in accordance with the Contract Documents, then such costs of uncovering, replacing and re-covering shall be paid for by Contractor at Contractor's Own Expense and any resulting Delay shall be consider an Unexcused Delay.

10.1.4 Off-Hours Inspections. Contractor shall request approval by County before arranging any inspections either: (1) before 7:00 am or after 3:00 pm on Monday through Friday, or (2) on any Saturday, Sunday, holiday or any other time when Work is not usually in progress. Such request shall be delivered to County at least two (2) working days in advance of the inspection being performed. Approval or disapproval of such request is in the sole and absolute discretion of County. Except where such off-hours inspections are due to a breach by County of an obligation under the Contract Documents, the additional cost (over and above that which would be required for inspections during regular business hours) to County of the inspection shall be paid for by Contractor at Contractor's Own Expense.

10.1.5 Access to the Work. Contractor shall make available for use by County, Inspectors of Record, Architect, County Consultants and others assigned to inspect or observe the Work, any equipment (wheelbarrow, shovel, ladder, man-lift, etc.) that is available or in use on Site, and is required to assist in such inspections or observations.

10.1.6 Right to Stop Work. County shall have the right, but not the obligation, to order Contractor to stop performance of Work. Inspectors of Record shall, only if and to the extent permitted by Applicable Laws or if they are given written authority to do so by County, have the authority, but not the obligation, to stop the Work whenever provisions of Contract Documents are not being complied with, or the conduct of the Work poses a probable risk of harm to persons or property.

10.1.7 No County Duty. No authority of the County, Inspectors of Record, Architect, County Consultants or others designated by County to inspect the Work that is conferred by the Contract Documents nor any decision made by any of them in good faith either to exercise or not exercise such authority, nor any recommendation by any of them, shall give rise to a duty or responsibility on the part of any of them to Contractor or to the Subcontractors, of any Tier.

10.1.8 Contractor Responsibility. Inspections or observations by the County, Inspectors of Record, County Consultants or others shall not in any way relieve Contractor from its sole responsibility for full compliance with all of the terms and conditions of the Contract Documents, nor be construed to lessen, to any degree, Contractor's responsibility for providing efficient and capable superintendence as required herein or for incorporating into the Work only those items of the Work that conform to the Contract Documents.

10.1.9 Reimbursement to County. Without limitation to any other provisions of the Contract Documents, Contractor shall reimburse the County at Contractor's Own Expense, or County shall have the right, at its option, to withhold from payments due to Contractor, costs of inspections, observations or testing and other Losses that are incurred for any of the following reasons: (1) Contractor has failed to execute the Work in accordance with the Contract Documents; (2) materials or equipment have been substituted by Contractor, without prior approval by the County and Architect; (3) Defective Work; or (4) to conduct load testing of certain portions of the structure that have not fully met the requirements of the Contract Documents.

10.2 SAFETY PRECAUTIONS AND PROGRAMS

10.2.1 General Safety Obligation. Contractor shall, notwithstanding the activities of others (such as, but not limited to, the County, Architect, Inspectors of Record, County Consultants or others designated by County to prepare safety recommendations or inspect or observe the Work), be solely responsible, on a twenty-four (24) hours a Day, seven (7) Days a week basis, for initiating, maintaining and supervising all safety precautions and programs on the Site in connection with the preparation, performance, observation or inspection of the Work, including all necessary precautions to protect and safeguard all persons and property from loss, injury, death or damage resulting, directly or indirectly, from the activities of Contractor or the Subcontractors, including, without limitation, all of the following:

- .1 persons in and around the Site, as well as their personal property and vehicles;
- .2 the Work, materials and equipment to be incorporated therein under care, custody or control of Contractor or the Subcontractors, of any Tier, whether in storage on or off the Site, including, without limitation, the provision of temperature control, covering and enclosures necessary to prevent Loss due to adverse weather conditions;
- .3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, curbs, roadways, structures (including, without limitation, protection from settlement or loss of lateral support) and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 construction and operations by the County, Architect and Inspectors of Record.

10.2.2 Contractor's Safety Program. Prior to starting the Work, Contractor shall prepare and submit to County a Safety Program, which shall comply with the requirements of the Contract Documents and shall include, at a minimum, guidelines, requirements and procedures for the following: safety management policy; emergency response plan; illness and injury prevention procedures; safety meetings; accident investigation; basic accident causes; safety inspection checklist; fire prevention and control; report forms; and employee safety manual and procedures for achieving compliance with safety requirements of insurers. A copy of the Safety Program shall be maintained on Site at all times and provided to the County upon request. Contractor is solely responsible for monitoring activities at the Site for compliance with the Safety Program and for the enforcement thereof.

10.2.3 Safety Orders. Contractor shall comply with all Applicable Laws, including, without limitation, all safety laws, standards, orders, rules, regulations and building codes, to prevent accidents or injury to persons on, about or adjacent to the Site and to provide a safe and healthful place of employment. Contractor shall, at Contractor's Own Expense, correct any violations of Applicable Laws occurring or threatened by conditions on the Site.

10.2.4 Safety Representative. Contractor shall designate a responsible member of its organization on the Site, who meets the qualification and competency requirements of Applicable Laws and whose sole duty shall be giving safety instructions, prevention of accidents and overall job site safety (including, without limitation, posting of information and other notices regarding safety that are required under occupational safety and health laws and

compliance with reporting and other occupational safety requirements pertaining to the protection of the life, safety and health of the workers). The name of the person so designated shall be reported to the County by Contractor prior to the commencement of any Work on the Site.

10.2.5 Protection. Contractor shall take reasonable precautions to protect the Work and all building materials, equipment, temporary field offices, storage sheds, and other public and private real and personal property that might be affected, directly or indirectly, by Contractor's activities associated with performance of the Work, and shall make good, at Contractor's Own Expense, all Loss due to failure to provide such reasonable precautions.

10.2.6 Safeguards, Disabled Access. Contractor shall erect and maintain, as required by existing conditions and performance of the Work, all necessary safeguards for safety and protection, including, without limitation, safety devices, belts, nets, barriers, safety rails, canopies, danger signs, fire protection, no smoking prohibitions, warnings against hazards, safety regulations postings and notifications to owners and users of adjacent sites and utilities, and shall, as required by Applicable Laws, make provision for access for, and provide assistive devices to, persons with disabilities, including, without limitation, providing safe pathways of travel around areas where construction is being performed so that occupants, visitors, the public and others on the Site with disabilities are afforded reasonably direct and barrier-free access to areas of the Site and Existing Improvements.

10.2.7 Fire, Explosives, Hazardous Substances. Contractor shall take all necessary precautions to guard against and eliminate possible fire hazards. Explosives may be used or stored only when authorized in writing by the County. Explosives shall be handled, used and stored in accordance with Applicable Laws. When use or storage of explosives or other Hazardous Substances or methods of construction involving use of dangerous materials or equipment are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.8 First Aid. Contractor shall maintain emergency first aid treatment for all workers and other persons on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A. §§651 et seq.) and all other Applicable Laws.

10.2.9 Unsafe Conditions. Contractor shall immediately correct any condition that exists on the Site, or that County, in its reasonable judgment, determines to exist on the Site, that is unsafe or potentially unsafe to persons or property.

10.2.10 Responsibility for Loss. Contractor shall promptly remedy Loss to any property or person caused in whole or in part by the failure of Contractor, the Subcontractors, of any Tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable to fully comply with the requirements of this Article 10, except Loss attributable solely to the negligent acts or omissions of the County, Inspectors of Record, Architect, County Consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable, in whole or in part, to the negligence, willful misconduct or violation of Applicable Laws by Contractor or a Subcontractor, of any Tier, or the failure by Contractor to comply with the Contract Documents. The foregoing obligations of Contractor are in addition to and not a limitation upon Contractor's indemnity obligations under Section 3.18, above.

10.2.11 Loading, Storage. Contractor shall be responsible for coordinating the storage and staging of materials and equipment on-Site and off-Site and shall not load or store or permit any part of the Work or the Site to be loaded or stored so as to endanger the safety of persons or risk loss or damage to property.

10.2.12 Emergency.

.1 Contractor Responsibility. In an emergency involving safety or protection of persons or property, Contractor shall act immediately, either at County's direction or as otherwise necessary under the circumstances, to prevent any Loss. In such cases, Contractor shall immediately notify County, which notice may be oral, followed within twenty-four (24) hours after occurrence of the incident by written confirmation of the occurrence of such emergency and Contractor's action in response thereto.

.2 County Action. If, in the sole discretion of County, the condition is immediately threatening life or property, County may, with or without notice to Contractor, take whatever immediate action is necessary to

correct the life-threatening condition, and the costs thereof, including, without limitation, any fees or costs of Architect, Inspectors of Record, County Consultants or others to whom County may be liable, shall be borne by Contractor at the Contractor's Own Expense.

10.2.13 No County Responsibility. Nothing set forth in this Section 10.2 or elsewhere in the Contract Documents shall be interpreted as an assumption of any responsibility on the part of County or other persons or entities other than the Contractor and the Subcontractors, to report such conditions to Contractor nor as relieving Contractor of any of its responsibilities under the Contract Documents.

10.2.14 Separate Contractors. With respect to work of a Separate Contractor being performed within an area of the Site that is under the responsibility or control of the Contractor, Contractor shall: (1) provide copies of the Safety Program to the Separate Contractors and advise the Separate Contractors of the areas of the Site to which the Safety Program applies and where compliance with the Safety Program is expected; (2) protect the Separate Contractors' work and workers from Loss due to the actions or inactions of Contractor and the Subcontractors; and (3) notify the Separate Contractor and County of any observed violation by the Separate Contractor of the Safety Program or of any violations by the Separate Contractor of Applicable Laws governing safety on the Site. Nothing herein shall be interpreted as relieving the Separate Contractors from their obligations to comply with the Contractor's Safety Program, as excusing any failure by a Separate Contractor from performing its obligations under its contracts with County or Applicable Laws or as obligating Contractor to directly supervise or enforce the obligations of the Separate Contractors to comply with the requirements of the Safety Program or Applicable Laws relating to safety.

10.3 HAZARDOUS SUBSTANCES, MOLD

10.3.1 Hazardous Substances.

.1 On Site Conditions.

(1) Existing Conditions. In the event Contractor or its Subcontractors encounter materials existing or otherwise present at the Site that are reasonably believed to be Hazardous Substances that have not been rendered harmless, Contractor and Subcontractors shall, except in cases where the removal, encapsulation or abatement of such Hazardous Substances is indicated by the Contract Documents to be part of the Work to be performed by Contractor, immediately stop Work in the area affected and report the condition to County in writing. Contractor and Subcontractors shall continue Work in unaffected areas reasonably believed safe. County shall then promptly arrange for the sampling, testing and profiling of such suspected Hazardous Substances to confirm the nature, quantity or concentration thereof. In the event that such suspected Hazardous Substances are determined not to be Hazardous Substances or to be Hazardous Substances but not of sufficient nature, quantity or concentration to trigger handling and manifesting of the same as a hazardous waste upon disturbance and removal, then Contractor and its Subcontractors shall, without any Contract Adjustment, be obligated to resume the portion of the Work that was suspended and shall proceed to handle and dispose of such materials pursuant to the Contract Documents, taking all reasonable precautions that are applicable under the circumstances. If, alternatively, the suspected Hazardous Substances are determined to be Hazardous Substances of sufficient nature, quantity or concentration to trigger handling and manifesting of the same as hazardous waste upon disturbance and removal, the parties shall determine what, if any, action to take with respect to such Hazardous Substances, whether to resume Work with respect to such Hazardous Substances, taking all reasonable precautions that are applicable under the circumstances, and what, if any, Contract Adjustment is appropriate and mutually agreed in order to account for any increased cost of, or Delay in connection with, handling or disposal of Hazardous Substances not already contemplated and provided for in the Contract Documents.

(2) Contractor Release. Contractor and its Subcontractors shall not cause the discharge, release, emission, spill, storage, treatment or disposal of any Hazardous Substance on or adjacent to the Site, except as required and permitted by the Contract Documents and Applicable Laws in connection with Contractor's performance of an obligation to remove Hazardous Substances as part of the Work agreed to be performed under the Contract Documents or as otherwise required under the provisions of this Subparagraph 10.3.1.1. Should Contractor or its Subcontractors discharge, release, emit, spill, treat, store or dispose of any Hazardous Substance on the Site in violation of the foregoing obligation or otherwise in violation of Applicable Laws, Contractor shall at Contractor's Own Expense and without limitation to County's other rights or remedies for default immediately (a) inform County in writing of such event, (b) advise County with respect to any release reporting or

notification requirement that may apply as a result of such event, (c) assist County in complying with any such reporting or notification requirement as determined by County, and (d) 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.

.2 Remediation by Contractor.

(1) Application. The provisions of this Paragraph 10.3.1.2 shall apply only if the Work to be performed by Contractor includes within its scope the removal, abatement, moving, handling, containment, disposal or transport of Hazardous Substances

(2) Advance Submissions to County. Before Contractor or any of its Subcontractors moves, removes, or transports Hazardous Substances to a facility for the receipt, treatment, storage or disposal of the Hazardous Substances ("Hazardous Substances Facility"), Contractor shall cause the person or entity who will be moving, removing or transporting the Hazardous Substances to provide to County the following: (a) verification of the Hazardous Substance Facility's or other transporter's licensed status to haul such materials; (b) verification of the Hazardous Substance Facility's licensed status, including a current permit to receive the specific materials to be transported there; (c) certification that the Hazardous Substance Facility is not under enforcement action by the U.S. Environmental Protection Agency ("EPA") or applicable State Governmental Authority or listed on any applicable EPA or applicable State Government Authority list of violating facilities; (d) verification of the Hazardous Substances Facility's EPA Identification Number (if applicable); and (e) original executed letter(s) of indemnity from the Hazardous Substances Facility bearing the Hazardous Substance Facility's letterhead. Contractor further warrants that the selected Hazardous Substance Facility is appropriately licensed and permitted to store, treat and dispose of Hazardous Substances waste in connection with the Work.

(3) Contractor Responsibility. Contractor warrants that it is aware of and understands the hazards which are presented to persons, property and the environment in performance of the transportation, storage and disposal of the Hazardous Substances described in the Contract Documents. Contractor and its Subcontractors and agents shall be responsible for the following: (a) processing the application for, and receiving on behalf of the County or appropriate entity, an EPA or state-equivalent generator identification number (if required); (b) preparing manifests and other shipping documents; (c) making all necessary arrangements (after consultation with County) for any off-Site transportation, treatment, storage and disposal of such Hazardous Substances in accordance with Applicable Laws; (d) ensuring the proper and lawful transportation and disposal of such Hazardous Substances, even if such services are performed by other entities under contract with Contractor or its Subcontractors; and (e) taking any necessary actions to ensure such proper transport and disposal in the event of any contingency, such as the rejection of the Hazardous Substances as nonconforming by any waste disposal facility. Contractor shall promptly provide to County copies of all manifests and other shipping documents confirming the receipt and proper disposal of all Hazardous Substances at the Hazardous Substances Facility, even if such services are performed by other entities under contract with Contractor or its Subcontractors.

(4) Reporting Requirements. Contractor shall comply with any Hazardous Substances release reporting requirements to Governmental Authorities directly applicable to Contractor. Notice of such reporting must be provided in advance to County or concurrently in the event of an emergency.

(5) Samples. Contractor and its Subcontractors shall retain all media samples for the longer of (a) the longest holding period specified in any federal, state or local laboratory analytical procedures or guidance for the analyses performed; or (b) three months for soil samples and thirty (30) Days for water samples. Further storage or transfer of samples will be made at County's expense upon County's written request of Contractor. Contractor shall require by contract that each and every Subcontractor and agent of Contractor or a Subcontractor who performs testing of samples in connection with the Work properly disposes of such samples in accordance with Applicable Laws after completion of testing and notice to County. Regarding any such samples which may remain on-Site, provided County has approved of such on-Site storage in advance, County agrees to pay all costs associated with the storage, transport, and disposal of such samples.

(6) **Verification.** Upon Final Completion of the Work, Contractor shall confirm to County in writing that: (a) all Hazardous Substances specified for removal in the Contract Documents have been removed; and (b) all Hazardous Substances wastes removed from the Site as part of the Work have been disposed of in accordance with this Subparagraph 10.3.1.2 and Applicable Laws in a Hazardous Substances Facility.

10.3.2 **Mold.** Contractor is responsible to immediately notify County in writing if any conditions in the construction materials incorporated or to be incorporated into the Work or present in Existing Improvements are encountered at the Site that Contractor or any Subcontractor knows or, in the exercise of due care of a Contractor and not that of a consultant with special or technical expertise in the subject of Mold, should know indicate the presence of Mold or if untreated are likely to result in the growth of Mold. Contractor shall thereafter take such precautions as are reasonably required to prevent the exposure of persons to such conditions until they have been evaluated. Except as otherwise authorized by the Contract Documents or as are usual and customary according to prevailing standards of the construction industry in the vicinity of the Project, Contractor shall not allow water or moisture to come into contact with materials in Existing Improvements or with materials located at the Site that are incorporated or to be incorporated into the Work and if such contact occurs, the areas affected shall be inspected by Contractor, using appropriate consultants experienced in testing and evaluating Mold, for the presence of Mold and evaluated for the potential of future growth of Mold. All portions thereof that are found to indicate the presence of Mold, or that are found to be in a condition that has the potential for becoming a source of Mold, shall be removed and replaced. Costs incurred by Contractor due to its failure to perform its obligation under this Paragraph 10.3.2 shall be borne by Contractor at Contractor's Own Expense.

10.3.3 **Release of County.** Contractor assumes the risk that its employees or the employees of its Subcontractors, and other persons that they cause or permit to be present on the Site, may be exposed to known or unknown Hazardous Substances or Mold. Under no circumstances shall County be liable for, and Contractor hereby fully and unconditionally releases County and the other Indemnitees from, and agrees to defend and indemnify County and the other Indemnitees on the terms set forth in Section 3.18, above, against, any and all known and unknown Losses resulting from or relating to the exposure of any employee of Contractor or its Subcontractors, or other person that they cause or permit to be present on the Site, to: (1) Hazardous Substances or Mold encountered in connection with or as a result of the performance of the Work, or (2) Hazardous Substances or Mold not necessarily encountered in connection with the performance of the Work, but to which any of them may nevertheless be exposed as a result of their being present on the Site.

10.3.4 **Communications with Governmental Authorities.** Contractor shall provide to County copies of all written communications with Governmental Authorities or others relating to Hazardous Substances or Mold (other than privileged communications); provided, however, that non-disclosure of privileged communications shall not limit Contractor's obligation to otherwise comply with the terms of the Contract Documents, including, without limitation, this Section 10.3.

10.3.5 **Subcontractors.** Contractor shall include provisions in all contracts it enters into with Subcontractors for the Work requiring them to assume toward Contractor and County the same obligations that Contractor assumes toward County under this Section 10.3. Contractor shall require the Subcontractors to ensure that such provisions are included in all contracts they enter into with all lower-Tier Subcontractors.

ARTICLE 11 INSURANCE

11.1 INSURANCE

11.1.1 **Contractor's Insurance Requirements.** Without limiting or diminishing any of the Contractor's obligations to defend, indemnify or hold the County harmless as set forth elsewhere in the Contract Documents, Contractor shall procure and maintain or cause to be maintained throughout the performance of the Work and for the duration of any guarantee or warranty provided under the Contract Documents, at Contractor's Own Expense, the following insurance coverages:

.1 **Workers' Compensation.** If the Contractor has "employees", as defined by the State of California, the Contractor shall provide a policy of statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Such policy shall include Employers' Liability (Coverage B) including

Occupational Disease with limits not less than \$1,000,000 per person per accident. Such policy shall be endorsed to waive subrogation in favor of the County and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement. Pursuant to §3700 of the California Labor Code, Contractor shall file with the County before commencing the Work the following signed certification:

"I am aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I shall comply with such provisions before commencing the performance of the Work of this Construction Contract."

.2 Commercial General Liability. Contractor shall provide a policy of Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Contractor's performance of its obligations hereunder. Such policy shall name the County, its agencies, districts, special districts and departments, and their respective directors, officers, elected or appointed officials, agents, employees and representatives, including, without limitation, the members of the Board of Supervisors, and all other Indemnitees, as "additional insureds" and contain a waiver of subrogation in favor of the County and all other such additional insureds. Such policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such policy contains a general aggregate limit, it shall apply separately to the Construction Contract or be no less than two (2) times the occurrence limit.

.3 Vehicle Liability. If vehicles or mobile equipment are used in the performance of the Work or other obligations under the Contract Documents, then Contractor shall provide a policy of liability insurance coverage for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such policy contains a general aggregate limit, it shall apply separately to the Construction Contract or be no less than two (2) times the occurrence limit. Such policy shall name the County, its agencies, districts, special districts and departments, and their respective directors, officers, elected or appointed officials, agents, employees and representatives, including, without limitation, the members of the Board of Supervisors, and all other Indemnitees, as "additional insureds" and contain a waiver of subrogation in favor of the County and all other such additional insureds.

.4 Property (Physical Damage). Contractor shall provide a policy of all-risk property insurance coverage for the full replacement value of all Contractor's equipment, improvements/alterations, temporary structures, and systems, including without limitation, items owned by others in the Contractor's care, custody or control, used on the Site or other County-owned property, or used in any way connected with the performance of the Work.

.5 Builder's All Risk (Course of Construction) Insurance. The Bid Form utilized by Contractor to prepare its Bid states whether the Contractor shall include Builder's All Risk (Course of Construction) Insurance for the Project. If the Bid Form states that such insurance shall be included by the Bidder in its Bid, then Contractor shall provide a policy of Builder's All Risk (Course of Construction) insurance coverage including (if the Work is located in an earthquake or flood zone or if required on financed or bond financing arrangements) coverage for earthquake and flood, covering the County, Contractor and every Subcontractor, of every Tier, for the entire Project, including property to be used in the construction of the Work while such property is at off-Site storage locations or while in transit or temporary off-Site storage. Such policy shall include, but not be limited to, coverage for fire, collapse, faulty workmanship, debris removal, expediting expense, fire department service charges, valuable papers and records, trees, grass, shrubbery and plants. If scaffolding, falsework and temporary buildings are insured separately by the Contractor or others, evidence of such separate coverage shall be provided to County prior to the start of the Work. Such policy shall be written on a completed value form. Such policy shall also provide coverage for temporary structures (on-Site offices, etc.), fixtures, machinery and equipment being installed as part of the Work. Contractor shall be responsible for any and all deductibles under such policy. Upon request by County, Contractor shall declare all terms, conditions, coverages and limits of such policy. NOTWITHSTANDING THE FOREGOING, COUNTY RETAINS THE RIGHT EXERCISED AT ANY TIME PRIOR TO AWARD TO ELECT TO USE ITS OWN BUILDER'S ALL RISK (COURSE OF CONSTRUCTION) INSURANCE and in the event County so elects to deduct the price for such insurance that is stated in Contractor's Bid, or if not so stated the amount included by Contractor for such insurance in the preparation of the Contractor's Bid, from the Contract Price by means of a Contract Adjustment

pursuant to Change Order or Unilateral Change Order. If the County so provides the All Risk (Course of Construction) insurance for the Project, then Contractor shall assume the cost of any and all applicable policy deductibles (currently, \$50,000 per occurrence) and shall insure its own machinery, equipment, tools, etc. from any loss of any nature whatsoever.

11.1.2 Other Mandatory Insurance Requirements. The Contractor shall comply with the following requirements, which shall be deemed applicable to all carriers and insurance policies provided pursuant to Paragraph 11.1.1, above:

.1 Insurer Rating. Any and all insurance carrier(s) providing insurance coverage under any and all policy(ies) of insurance provided by Contractor pursuant to Paragraph 11.1.1, above, shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) (unless such requirements are waived in writing by the County Risk Manager, and if the County's Risk Manager waives such requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term);

.2 Self Insured Retentions. Contractor shall advise County in writing the dollar amount of any "self insured retention" maintained by the Contractor that exceeds \$500,000 per occurrence. Each such self insured retention must have the prior written consent of the County Risk Manager before the commencement of any Work or operations or activities relating to the Work. If Contractor is notified that a self insured retention is unacceptable to the County, then at the election of the County, exercised in the County's sole and absolute discretion, by means of the written approval of the County's Risk Manager, the insurance carriers affected shall either: (1) reduce or eliminate such self-insured retention as respects the Construction Contract; or (2) procure a bond, satisfactory to County and approved by County in writing, which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

.3 Evidence of Insurance. Contractor shall cause Contractor's insurance carrier(s) to furnish to the County either: (1) properly executed original certificate(s) of insurance and certified original copy(ies) of endorsement(s) effecting the coverage(s) required by this Section 11.1, or (2) if requested to do so orally or in writing by the County Risk Manager, provide original, certified copy(ies) of policy(ies) including all endorsement(s) and all attachment(s) thereto, showing such insurance is in full force and effect. Such certificate(s) and all policies of insurance provided by Contractor pursuant to this Section 11.1 shall contain the covenant of the insurance carrier(s) that thirty (30) Days' written notice shall be given to the County prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. Each certificate of insurance and endorsement shall be signed by an individual expressly authorized by the insurance carrier to do so on the carrier's behalf. Contractor shall, if requested, provide written proof of such authorization. ***Contractor shall not commence any Work or any activities or operations related to the performance of the Work unless and until Contractor has complied with all of the requirements of this Section 11.1.***

.4 Modification, Cancellation, Changes in Limits. A material modification, cancellation, expiration, or reduction in coverage, shall constitute an Event of Contractor Default for which County shall have right, without limitation to its other rights or remedies provided for in the Contract Documents or under Applicable Laws, to terminate this Construction Contract. Such Event of Contractor Default may only be deemed cured if the County receives, prior to the effective date of such material modification, cancellation, expiration or reduction in coverage, properly executed original certificate(s) of insurance and original, certified copy(ies) of policy(ies) and endorsement(s), including all attachment(s) thereto, evidencing that the coverage(s) required by this Section 11.1 is(are) and will continue, without any gap in coverage, in full force and effect in accordance with all of the requirements of this Section 11.1

.5 Primary Coverage. It is understood and agreed to by County and Contractor that the Contractor's insurance coverage(s) provided under this Section 11.1 shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

.6 Additional Coverages. County reserves the right to modify, adjust, add to and/or increase the types, amounts and terms of any insurance required under this Section 11.1 if the County Risk Manager determines, in the exercise of his/her sole and absolute discretion, that the type, amount or terms of the insurance required by this Section 11.1 has(have) become inadequate or that additional risk or exposure exists (such as, without

limitation, the use of aircraft, watercraft, cranes, etc.) due to: (1) a Change in the Work; (2) the period of time of Contractor's actual performance of the Work continuing for longer than five (5) years from the Date of Commencement, whether due to Contract Adjustment or for any for any other reason; or (3) other circumstances not reasonably foreseeable to County.

.7 Subcontractors. Contractor shall include provisions in its subcontracts requiring each Subcontractor to assume an obligation toward Contractor to furnish insurance that complies with all of the requirements of this Section 11.1 as apply to Contractor's insurance provided to Owner and requiring such Subcontractors to furthermore include provisions in their contracts with lower-Tier Subcontractors likewise requiring such lower Tier Subcontractors assume the same obligations for providing such insurance and for passing through all such obligations to all lower Tier Subcontractors.

.8 Self-Insurance. If approved by County, in the exercise of its sole and absolute discretion, the insurance requirements contained in this Section 11.1 may be met with a program(s) of self-insurance provided that such program has been submitted to County and approved in writing by County prior to commencement of the Work or of any activity or operation related to the performance of the Work.

.9 Notice of Claim. Contractor agrees to notify County of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of the Work.

ARTICLE 12 BONDS

12.1 PERFORMANCE BOND AND PAYMENT BOND

12.1.1 Performance and Payment Bonds. Within ten (10) Days after the issuance of the Notice of Intent to Award and prior to commencing Work, Contractor shall deliver to County a good and sufficient labor and materials payment bond ("Payment Bond") and a good and sufficient performance bond ("Performance Bond"), each in the amount of one hundred percent (100%) of the Contract Price.

12.1.2 Changes. The penal amounts of the Performance Bond and Payment Bond shall be increased on account of Change Orders and Unilateral Change Orders increasing the Contract Price. If requested by County, Contractor shall deliver to County evidence of such increases.

12.1.3 Replacement. Should any bond required hereunder or any Surety on such bond become or be determined by County to be insufficient, it shall be replaced within ten (10) Days by a bond that fully complies with the requirements of this Section 12.1.

12.1.4 Duration. The Payment Bond shall remain in effect until Acceptance of the Work and all Claims of Contractor and the Subcontractors, of any Tier, have been fully and finally resolved. The Performance Bond shall remain in effect and assure faithful performance of all Contractor's obligations under the Contract Documents, including, without limitation, all warranty obligations.

12.1.5 Condition of Payment. No payments to Contractor for Work performed shall be made or due until there has been full compliance with the requirements of this Section 12.1.

12.1.6 Surety Rating. Any Surety company issuing the Payment Bond or Performance Bond shall be, at all times while such bond is in effect, an Admitted Surety. The Surety company issuing the Performance Bond shall additionally have at all such times a current A.M. Best rating of A VIII (A:8) or better.

12.1.7 Premiums. The premiums for the Performance Bond and Payment Bond are included in the Contract Price and shall be paid by Contractor at Contractor's Own Expense.

12.1.8 Obligees. The Performance Bond shall name County as obligee. All performance bonds, if any, purchased by Subcontractors shall name County as a dual obligee with Contractor.

12.1.9 **No Exoneration.** The Performance Bond and Payment Bond shall contain provisions to the effect that Changes, Change Orders, Unilateral Change Orders, Construction Change Directives, Modifications, Changes and Contract Adjustments shall in no way release or exonerate Contractor or its Surety from their obligations and that notice thereof is waived by the Surety.

12.1.10 **Communications.** County shall have the right to communicate with Surety with respect to matters that are related to performance of the Work. Contractor shall be provided with a copy of all such communications that are in writing. Such communications shall not create or be interpreted as creating any contractual obligation of County to Surety.

12.1.11 **No Limitation.** The requirements of this Section 12.1 pertaining to the Performance Bond and the Payment Bond shall be without limitation to any other obligations Contractor may have under Applicable Laws to provide bonding for the benefit of, and to assure payment to the Subcontractors performing the Work for, the Project.

12.1.12 **Subcontractor Bonds.** Each performance bond, if any, furnished by a first-Tier Subcontractor shall include a provision whereby the Surety consents to the contingent assignment of Contractor's rights under such bond to County as provided in Section 5.3, above.

12.1.13 **Claims.** By incorporation of the Construction Contract into the Performance Bond issued by Surety, Surety shall be deemed, subject to the other terms of the Performance Bond, to be bound by all of the obligations assumed by Contractor under the Contract Documents, including, without limitation, bound by any determination, resolution, award or judgment entered or made upon any Claim by or against Contractor.

ARTICLE 13 UNCOVERING AND CORRECTION OF THE WORK

13.1 UNCOVERING OF THE WORK

If a portion of the Work is covered contrary to the request or direction of County, Inspector of Record or Architect, or contrary to the requirements of the Contract Documents, it must, if required by the any of them, be uncovered for observation and be re-covered by Contractor at Contractor's Own Expense.

13.2 CORRECTION OF THE WORK

Contractor shall promptly correct Defective Work, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. All such Defective Work shall be either: (1) replaced and all the Work disturbed thereby made good by Contractor at Contractor's Own Expense; or (2) County may exercise its option pursuant to Section 13.4, below, to accept such Work and adjust the Contract Price.

13.3 GUARANTEE TO REPAIR PERIOD

13.3.1 **Guarantee To Repair Period.** Besides guarantees and warranties required elsewhere in the Contract Documents, Contractor guarantees the Work as provided hereinbelow. The period of this guarantee, termed the "Guarantee To Repair Period," is for one (1) year commencing as follows:

.1 for any portion of the Work that, upon Substantial Completion of the overall Work, is fully and finally complete and usable in all respects independent of other portions of the Work that are not fully and finally complete, on the date of Substantial Completion of such portion of the Work;

.2 for space beneficially occupied or for separate systems fully utilized prior to Substantial Completion, from the first date of such beneficial occupancy or full utilization, as established by an appropriate written notice by County of intent to take beneficial occupancy; or

.3 for all Work other than that described in Subparagraph 13.3.1.1, above or Subparagraph 13.3.1.2, above, from the date of Final Completion of the Work.

13.3.2 Repair by Contractor. Subject to the provisions of Paragraph 13.3.3, below, Contractor shall do the following: (1) correct, repair, replace, remove and restore, to the County's satisfaction, any Defective Work that becomes apparent during the progress of the Work or during the Guarantee To Repair Period; (2) correct, repair, replace, remove and restore, to the County's satisfaction, any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work; and (3) remove from the Site all the Work identified by the County as Defective Work, whether incorporated or not and whether discovered before or after Substantial or Final Completion. Ordinary wear and tear, abuse, or neglect by County or by County employees, its staff, visitors, public or others (except for those under the control or responsibility of Contractor or its Subcontractors) who are authorized or admitted by County to enter, use or occupy the Work, or who enter, use or occupy the Work after Final Completion, are excepted from the foregoing guarantee. All Losses resulting from Defective Work, including, without limitation, all costs of such correction, repair, replacement, removal and restoration, additional testing, inspection and additional service fees and costs of the Inspector of Record, Architect, County Consultants or others whose services may be made necessary thereby as well as any Loss to any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction, repair, replacement, removal or restoration of Defective Work, shall be paid for by Contractor at Contractor's Own Expense. Contractor shall correct, repair, replace, remove and restore Defective Work at such times as are acceptable to the County and in such a manner as to avoid, to the greatest extent practicable, disruption to the activities of the County, its staff, visitors, the public or others. Contractor shall notify the County in writing upon the completion of such correction, repair, replacement, removal and restoration.

13.3.3 Notice by County. Except as otherwise provided in this Paragraph 13.3.3 where immediate corrections are needed due to dangerous conditions or risk of imminent Loss or interruption of County operations, the County will give notice to Contractor of Defective Work observed prior to Final Completion in accordance with the provision of Section 15.1, below, governing the occurrence of an Event of Contractor Default and the Contractor shall proceed to cure such Event of Contractor Default in accordance with the requirements of Section 15.1, below, and Paragraph 13.3.2, above. With respect to Defective Work observed after Final Completion, the County will give notice to Contractor with reasonable promptness and Contractor shall commence the correction, repair, replacement, removal and restoration as required by Paragraph 13.3.2, above, no later than ten (10) Days after mailing of such notice to Contractor and Contractor shall thereupon diligently and continuously prosecute such correction, replacement, repair, or restoration to completion. Notwithstanding the foregoing, if in the County's opinion the presence of Defective Work, whether observed prior to Final Completion or after Final Completion and during the Guarantee To Repair Period, poses a risk or threat: (1) to life, safety or the protection of property; (2) of imminent Loss to the County or to any other person or entity; or (3) of causing an interruption in the operations of the County, then County will have the right, in the exercise of its sole and absolute discretion, to proceed with correction or replacement of the Defective Work without prior notice to Contractor, but in such cases will attempt to notify Contractor as soon as possible of the conditions encountered and the action taken by County. Such action by County without prior notice to Contractor shall not relieve Contractor of its responsibility for the costs of such County action or for any Loss occasioned by the Defective Work or necessitated by the County's action, whether such Loss occurs before or after such County action is implemented or completed.

13.3.4 Correction by County. If Contractor fails to perform any of its obligations under Paragraph 13.3.2, above, to correct, repair, replace, remove or restore then County, or Separate Contractors under the County's direction, may, notwithstanding any other provisions of this Article 13, proceed to do so and all costs associated therewith (including, without limitation, the cost to store any materials removed) shall be the responsibility of and paid by Contractor at Contractor's Own Expense. Such action by County will not relieve Contractor of the guarantees provided in this Article 13 or elsewhere in the Contract Documents. In addition to Contractor's other obligations under Paragraph 13.3.2, above, Contractor shall correct, repair, replace, remove and restore, to the County's satisfaction and at Contractor's Own Expense any other parts of the Work and any other real or personal property that are damaged or destroyed as a result of such actions by County or the Separate Contractors.

13.3.5 Sale. If Contractor does not pay the costs of, or any of the Losses associated with, the correction, repair, replacement, removal or restoration required by the provisions of Paragraph 13.3.2 through Paragraph 13.3.4, above, then within five (5) Days after notice by the County, County may sell any materials or other items of Work removed at auction or at private sale or otherwise dispose of such materials or items and shall account for the net proceeds thereof, after deducting all such costs and Losses, and all costs of sale. If such net proceeds of sale do not cover the Losses for which Contractor is liable to the County, the County may at its option reduce the Contract Price or any payments due to Contractor by such deficiency or recover such deficiency from Contractor.

13.3.6 **No Limitation.** Contractor's obligations under this Article 13 are in addition to, and not in limitation of, its warranty obligations under Section 3.5, above, and any other obligation, guaranty or warranty of Contractor or any other third party under the Contract Documents. Nothing contained in this Article 13 shall be construed to shorten any periods of limitation with respect to other obligations of Contractor under the Contract Documents that are for longer specified periods. Establishment of the Guarantee To Repair Period in no way limits either Contractor's liability for Defective Work or the time within which proceedings may be commenced to enforce Contractor's obligations under the Contract Documents.

13.4 ACCEPTANCE OF NONCONFORMING WORK

Notwithstanding any other provisions of the Contract Documents to the contrary, the County shall have the option, exercised in its sole and absolute discretion after notice to Contractor, in lieu of requiring that Defective Work be remedied or corrected, to reduce the Contract Price to reflect the reduced value of the performance received by County. Such option shall be exercised solely by written notice to Contractor and shall not be implied from any act or omission by County. If there are no remaining payments of the Contract Price to be made to Contractor, or if the remaining payments and retention are insufficient to cover the amount of the reduction of the Contract Price, Contractor shall promptly pay to County the amount of any such deficiency.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 GOVERNING LAW

The interpretation and enforcement of the Construction Contract and other Contract Documents and of the performance by the parties thereunder shall, notwithstanding application of the principles of conflicts of laws, be governed by the laws of the State of California. The Superior Court for the County of Riverside shall have exclusive jurisdiction and venue over any legal proceedings arising out of or involving the interpretation or enforcement of, or other matters relating to, the Construction Contract, the other Contract Documents or the performance of the parties thereunder.

14.2 TIME OF ESSENCE

All time limits stated in the Contract Documents relative to Contractor's performance of its obligations under the Contract Documents are of the essence.

14.3 SUCCESSORS AND ASSIGNS

The Construction Contract and other Contract Documents shall be binding on successors, assigns and legal representatives of County and Contractor, respectively. Contractor shall not assign, sublet or transfer an interest in or claim under this Construction Contract without advance written approval of County, which approval may be granted or withheld by County in its sole and absolute discretion, and any assignment, subletting or transfer without written approval by County shall be deemed void from its inception. Any assignment, subletting or transfer, whether or not approved by County, will not release Contractor from any of its obligations under the Contract Documents to County. County shall have the right to assign, sublet or transfer its interest in or any claim under the Construction Contract upon written notice to Contractor.

14.4 WRITTEN NOTICE

Any notice from one party to the other or otherwise under the Contract Documents shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall be deemed to have been duly served if served in the following manner, and in accordance with Civil Code §8100 et seq.:

14.4.1 **Notice to County.** If notice is given to County: (1) by personal delivery thereof to County; or (2) by depositing same in United States mail, enclosed in a sealed envelope addressed to County at Economic Development Agency, Riverside Centre, 3403 Tenth Street, 4th Floor, Riverside, CA 92501, and to such other address as set forth in the Bidding Documents as the location for submission of Bids and sent by registered or certified mail with postage

prepaid, or express mail or overnight delivery by an express mail carrier; or (3) by leaving the notice and mailing a copy in the manner provided in Code of Civil Procedure §415.20.

14.4.2 Notice to Contractor. If notice is given to Contractor: (1) by personal delivery thereof to Contractor; or (2) by depositing same in United States mails, enclosed in a sealed envelope addressed to Contractor at its address stated in the Construction Contract, or if none is so stated at the address on the records of the Contractor's State License Board and sent by registered or certified mail with postage prepaid or express mail or overnight delivery by an express mail carrier; or (3) by leaving the notice and mailing a copy in the manner provided in Code of Civil Procedure §415.20.

14.4.3 Notice to Claimant. If notice is given to a claimant as defined in Civil Code §8004: (1) by personal delivery thereof to claimant; or (2) by depositing same in United States mail, enclosed in a sealed envelope addressed to claimant at its address stated in: a preliminary notice, stop payment notice, or claim against a payment bond; or on the records of the Contractor's State License Board; and sent by registered or certified mail with postage prepaid or express mail or overnight delivery by an express mail carrier; or (3) by leaving the notice and mailing a copy in the manner provided in code of Civil Procedure §415.20.

14.4.4 Notice to Surety. If notice is given to the Surety: (1) by personal delivery to the Surety; or (2) by depositing same in United States mail, enclosed in a sealed envelope, addressed to the Surety at the address of the Surety shown in the applicable Performance Bond or Payment Bond, or if none is shown, the address on the records of the Department of Insurance, and sent by registered or certified mail with postage prepaid or express mail or overnight delivery by an express mail carrier; or (3) by leaving the notice and mailing a copy in the manner provided in Code of Civil Procedure §415.20.

14.5 RIGHTS AND REMEDIES

14.5.1 County Rights. Rights and remedies available to the County under the Contract Documents are in addition to and not a limitation of County's rights and remedies otherwise available under other provisions of the Contract Documents or Applicable Laws.

14.5.2 Writing Required. Provisions of the Contract Documents may be waived by County only in writing signed by the Director stating expressly that it is intended as a waiver of specified provisions of the Contract Documents.

14.5.3 Subsequent Breach. A waiver by either party of any breach of any term, covenant, or condition contained in the Contract Documents shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained therein whether of the same or a different character.

14.6 NO NUISANCE

Contractor shall not maintain, commit or permit the maintenance or commission of any nuisance in connection with the performance of Work.

14.7 EXTENT OF AGREEMENT

The Contract Documents represent the full and complete understanding of every kind or nature between the parties and all preliminary negotiations and prior representations, proposals and contracts, of whatever kind or nature, are merged herein and superseded hereby. No verbal agreement or implied covenant shall be held to vary the provisions of the Contract Documents. Any modification of this Construction Contract or the other Contract Documents will be effective only by written instrument signed by both County and Contractor and shall, if required by Applicable Laws, be formally approved or ratified by the Board of Supervisors.

14.8 NO THIRD-PARTY RIGHTS

Nothing contained in the Construction Contract or the other Contract Documents is intended to make any person or entity who is not a signatory to this Construction Contract a third-party beneficiary of any right of Contractor (including,

without limitation, any right of Contractor to a benefit derived from, or to the enforcement of, an obligation assumed by County) that is expressly or impliedly created by the terms of the Contract Documents or by operation of Applicable Laws.

14.9 SEVERABILITY

Should any part, term, portion or provision of the Construction Contract or the other Contract Documents, or the application thereof to any party or circumstance, be held to be illegal, invalid or in conflict with Applicable Laws, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to any other party or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by Applicable Laws.

14.10 PROVISIONS REQUIRED BY APPLICABLE LAWS

Each and every provision of law and clause required by Applicable Laws to be inserted in the Construction Contract or other Contract Documents shall be deemed to be inserted in the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or if inserted and requires correction, then upon request of either party these General Conditions shall forthwith be amended by the parties to the Construction Contract to make such insertion or correction.

14.11 SURVIVAL

All provisions of the Contract Documents that either expressly, or by their nature, require performance or assumption by Contractor of an obligation that extends beyond termination of the Construction Contract or Final Completion of the Work, including, without limitation, Contractor's obligations of, or relating to, indemnification, insurance, ownership of documents, retention and audit of books and records, warranties and guaranties and resolution of Claims shall be deemed to survive either termination of the Construction Contract or Final Completion of the Work.

14.12 FEDERAL GRANTS

In the event of a federal grant or other federal financing participation in the funding of the Project, Contractor shall, as required in connection with, or as a condition to, such federal grant or other federal financing participation, permit access to and grant the right to examine its books covering its services performed and expenses incurred under the Construction Contract or other Contract Documents by the federal agency and comply with all applicable federal agency requirements including, without limitation, those pertaining to work hours, overtime compensation, non-discrimination, and contingent fees.

14.13 PROHIBITED INTERESTS

Contractor agrees not to accept any employment or representation which will, or is likely to, make Contractor "financially interested" (as provided in California Government Code §§1090 and 87100, hereinafter "financially interested") in any decision made by County on any matter in connection with which Contractor has been retained in connection with the Project. Without limitation to the foregoing, transactions and interests prohibited by this Section 14.13 include the following: (1) no official or employee of County who is authorized in such capacity and on behalf of County to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall become directly or indirectly financially interested in the performance of the Construction Contract or in any part thereof; (2) no officer, employee, architect, attorney, engineer or inspector of or for County who is authorized in such capacity and on behalf of County to exercise any executive, supervisory or other similar functions in connection with Construction Contract or in any part thereof; and (3) Contractor shall receive no compensation hereunder, and shall repay County for any compensation received by Contractor hereunder, should Contractor or any of the Subcontractors aid, abet or knowingly participate in violation of this Section 14.13.

14.14 ASSIGNMENT OF ANTI-TRUST ACTIONS

California Public Contract Code §7103.5(b), which is hereby incorporated by this reference, provides:

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, contractor or the subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to Contractor, without further acknowledgement by the parties."

Contractor for itself and all the Subcontractors agrees to assign to County all rights, title and interest in and to all such causes of action Contractor and all the Subcontractors may have in connection with purchases related to or under the Contract Documents. This assignment shall become effective at the time County tenders Final Payment to Contractor, and Contractor shall require assignments from all the Subcontractors to comply herewith.

14.15 NO WAIVER

County's approval, acceptance, use or payment for any or part of Contractor's performance of the Work shall not in any way alter Contractor's obligations, or waive any of County's rights, under Contract Documents.

14.16 CONSENT TO PHOTOGRAPHING

Contractor is advised that County intends, from time to time, to take photographs, videotapes and/or motion pictures of the Work, and workers located on the Site and proximate settings. Contractor consents to the use of Contractor's name and likeness in instructional or training uses, news releases, advertising and/or publicity throughout the world in perpetuity, in all media now known or hereafter invented. Contractor shall include in its contracts with its Subcontractors a consent by the Subcontractor to the use of Subcontractor's name and the likenesses of its employees on the same terms as provided for herein applicable to such consent by Contractor.

ARTICLE 15 DEFAULT, TERMINATION AND SUSPENSION

15.1 COUNTY REMEDIES FOR DEFAULT

15.1.1 **Event of Default.** Each and any of the following shall be considered an Event of Contractor Default:

- .1 Contractor files a petition, or has filed against it a petition, for bankruptcy or is adjudged bankrupt;
- .2 Contractor makes a general assignment for the benefit of its creditors;
- .3 a receiver is appointed on account of Contractor's insolvency;
- .4 Contractor defaults, by failing or refusing to perform any obligation set forth in the Construction Contract, General Conditions or elsewhere in the Contract Documents (including, without limitation, the performance or installation of Defective Work) and thereafter: (1) fails to commence to cure such default within two (2) working days after receipt of written notice of default; (2) if the default can be cured within three (3) Days, Contractor fails or refuses after commencing to cure in accordance with Clause (1) hereof to fully cure such default within three (3) Days after receipt of written notice of default; or (3) if the default cannot be fully cured within three (3) Days, Contractor fails after commencing to cure in accordance with Clause (1) hereof to diligently and continuously prosecute and fully cure such default within ten (10) Days after receipt of such written notice;
- .5 Contractor fails or refuses to perform an obligation set forth in the Construction Contract, General Conditions or other Contract Documents that either (1) cannot be cured, or (2) cannot be cured within the 10-Day cure period set forth in Subparagraph 15.1.1.4, above;

.6 a breach of any other agreement between County and Contractor as provided in Paragraph 15.1.9, below; or

.7 if Contractor was previously prequalified as a condition for its bidding the Project pursuant to a Prequalification conducted by County, Contractor's prequalification status has been revoked or cancelled due to any of the following: (1) receipt by County of new information indicating that a statement made in Contractor's Prequalification Submittal (as defined in the Prequalification Documents) was false or misleading; (2) ownership of 50% of more of the stock or assets Contractor has changed; (3) if Contractor is a Project Joint Venture, its Principal Managing Partner (as those terms are defined in the Prequalification Documents) has ceased to function, or fully function, in the capacity of a Principal Managing Partner; or (4) Contractor has failed to comply with the requirements of the Prequalification Documents pertaining to minimum safety Prequalification requirements for Subcontractors.

15.1.2 County's Remedies. Without limitation to the County's other rights or remedies under the Contract Documents or Applicable Laws, if there is an Event of Contractor Default, County shall have the right to exercise any one or more of the following remedies:

.1 Take Over Work. County may, without terminating the Construction Contract and without incurring any additional liability or responsibility to Contractor (including, without limitation, any obligation to agree to a Contract Adjustment for any portion of the taken-over or non-taken-over Work), take over and perform, or engage others to perform, all or a portion of the Work.

.2 Suspend Work. County may, without terminating the Construction Contract and without incurring any additional liability or responsibility to Contractor (including, without limitation, any obligation to agree to a Contract Adjustment for any portion of the suspended or non-suspended Work), suspend Contractor's performance of all or a portion of the Work for as long a period of time as the County determines, in its sole discretion, is appropriate.

.3 Termination. County may, without incurring any additional liability or responsibility to Contractor, terminate the Construction Contract, the Work or any portion thereof.

.4 Surety. If there is an Event of Contractor Default pursuant to any of Subparagraphs 15.1.1.1 through 15.1.1.5, above, County may, with or without terminating the Construction Contract and without incurring any additional liability or responsibility to Contractor or Surety (including, without limitation, any obligation to agree to a Contract Adjustment), exercise its rights under the Performance Bond furnished by Contractor by giving Surety ten (10) Days' written notice of demand to perform; provided, however, that if the Surety fails, within seven (7) Days after receipt by Surety of written demand, to deliver to the County written notice of its unconditional intention to perform or does not commence performance of the Work within ten (10) Days from receipt of such notice of demand, the County may, at Contractor's Own Expense and/or the expense of the Surety, and with or without terminating the Construction Contract, proceed to complete the Work by any other means County deems expedient. By executing its Performance Bond incorporating the terms of the Construction Contract, Surety shall be deemed to have agreed, without limitation, to the provisions of this Paragraph 15.1.2 as constituting a binding obligation of Surety under its Performance Bond that shall control over any conflicting provisions set forth in the Performance Bond. Neither delivery by Surety of such written notice of unconditional intention to perform nor its timely performance of the Work in accordance with the terms of the Contract Documents and Performance Bond shall constitute waiver by Surety of any rights it may have under the Performance Bond and Applicable Laws to limit its liability to the penal amount of the Performance Bond.

15.1.3 Contractor Tools, Equipment. Upon County's exercise of one or more of its remedies following an Event of Contractor Default, County shall have the right, but not the obligation, to perform or complete all or any portion of the Work using any means that County may deem expedient, including, without limitation, taking possession and utilization of any or all of the materials, equipment, appliances, tools, plant and other property not owned by Contractor that are on the Site for County's use in performing the Work.

15.1.4 Contractor Obligations. Upon exercise by County of its remedies following an Event of Contractor Default, Contractor shall, unless County directs in writing otherwise, do the following:

.1 immediately discontinue performance of the Work to the extent specified in writing by County;

.2 remove no materials, equipment or tools (other than those owned by Contractor and not necessary for performance of a portion of the Work not terminated or discontinued) from the Site unless directed to do so by County and take all actions necessary or appropriate, or that the County may direct in writing, for the protection and preservation of the Work, any materials, equipment or tools at the Site and any materials or equipment in transit to the Site;

.3 place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for Contractor to continue performance of such portion, if any, of the Work that is not discontinued or terminated by County in its written notice;

.4 provide to the County, in writing, no later than two (2) Days after request by County, a statement listing or providing: (1) all subcontract agreements, purchase orders and contracts that are outstanding, as well as any change orders, amendments and modifications thereto; (2) the status of invoicing, payments and balance owing under each such subcontract agreement, purchase order and contract; (3) the status of performance and any claims asserted under each such subcontract agreement, purchase order and contract; and (4) providing such other information as the County may determine to be necessary in order to decide whether to accept assignment of any such subcontract agreement, purchase order or contract;

.5 promptly following and in accordance with County's written direction: (1) assign to the County or its designee those subcontract agreements, purchase orders or contracts, or portions thereof, that the County elects in writing to accept by assignment; (2) cancel, on the most favorable terms reasonably possible, any subcontract agreement, purchase order or contract, or portion thereof, that the County does not elect to accept by assignment; and (3) if requested by County, settle, with the prior written approval of County of the terms of settlement, outstanding liabilities to Subcontractors with respect to the Work terminated or discontinued;

6. not terminate any insurance required by the Contract Documents;

7. thereafter continue only such performance as may be directed by County;

8. deliver to the County the documents required to delivered pursuant to Paragraph 1.3.6,
above; and

9. at the written request and option of County, exercised in its sole discretion, deliver to the County, and transfer title to the County of, any completed items, materials, products, equipment or other unincorporated parts of the Work that have not been previously delivered to the Site.

15.1.5 Accounting and Payment

.1 Full Termination or Discontinuance.

(1) **Further Payment.** In the event an exercise by County of any of its remedies following an Event of Contractor Default results in a termination or discontinuance of the entire Work, then no further payment shall be due to Contractor for the Work until an accounting has been conducted in accordance with this Paragraph 15.1.5.

(2) **Time for Accounting.** Within forty-five (45) Days after Final Completion of the Work by Contractor, Surety, County or others at request of County, an accounting shall be made pursuant to this Paragraph 15.1.5 of the amount due to Contractor or County.

(3) **Payment Amount.** If, based on the accounting conducted pursuant to this Paragraph 15.1.5, the Contractor Amount exceeds the County Amount, then the difference shall be paid by County to Contractor within fifteen (15) Days after demand by Contractor following completion of such accounting. If the County Amount exceeds the Contractor Amount, then the difference shall be paid by Contractor to County within fifteen (15) Days after demand by County following completion of such accounting. Payment by Contractor of the amount due to County pursuant to such accounting shall not be construed as a release of Contractor's obligation to County for, or County's right to recover from Contractor, any Losses, of any kind whatsoever, not part of the calculation of the County Amount (including, without limitation, additional Losses related to circumstances that formed the basis for

calculation of the County Amount) that may be then or thereafter owing to or recoverable by County under Applicable Laws or the Contract Documents.

(4) **Contractor Amount.** The Contractor Amount used as the basis for payment pursuant to the accounting under this Paragraph 15.1.5 shall be calculated as follows:

(a) take a portion of the Contract Price determined by multiplying (i) the Contract Price, by (ii) the County's Good Faith Determination of the percentage of the Work properly performed by Contractor and (A) in permanent place, (B) previously fabricated and delivered to the Site or (C) fabricated and en route for delivery to the Site and delivered to the Site within a reasonable time after Contractor's receipt of such written notice; and

(b) subtract therefrom all amounts previously paid by County to Contractor or to Subcontractors.

(5) **County Amount.** The County Amount used as the basis for payment pursuant to the accounting under this Paragraph 15.1.5 shall be calculated based on the sum of all past, present and future Losses to County resulting or reasonably certain to result, directly or indirectly, from any or all of the following: (a) any negligence, willful misconduct, or Defective Work on the part of Contractor or any Subcontractor; (b) any Event of Contractor Default, whether or not constituting the basis of the County's termination or discontinuance; (c) the County's exercise of its rights and remedies under and in accordance with the Contract Documents or Applicable Laws following the occurrence of an Event of Contractor Default; and (d) the payment by County of amounts to Contractor or any Subcontractor that were not owing to Contractor or that were in excess of the amount to which Contractor was entitled under the Contract Documents.

.2 Partial Termination or Discontinuance. In the event an exercise by County of its remedies for an Event of Contractor Default results in a discontinuance or termination of only a portion of the Work, then the Contract Price and Contract Time shall be adjusted under the provisions of Article 7 and Article 8, above, applicable to Deleted Work. Contractor shall thereafter continue to be paid for its performance of the other portions of the Work in accordance with the terms of the Contract Documents, less any amounts that County is entitled to withhold under the terms of the Contract Documents.

.3 Exclusive Compensation. Contractor agrees to accept such amounts, if any, as allowed under this Paragraph 15.1.5 as its sole and exclusive compensation in the event of an exercise by County of its remedies permitted by the Contract Documents or Applicable Laws following an Event of Contractor Default.

15.1.6 Surety. Without limitation to any of the County's other rights or remedies under a Performance Bond furnished by Contractor, Contract Documents or Applicable Laws, the County has the right to suspend, take over or terminate the performance of the Work by Surety in the event of any of the following: (1) failure of Surety or its contractors to begin the Work within a reasonable time in such manner as to ensure full compliance with the Contract Documents within the Contract Time; (2) abandonment of the Work by Surety or its contractors; (3) if at any time the County makes a Good Faith Determination that the Work is unnecessarily or unreasonably delayed by Surety or its contractors; (4) violation by Surety or its contractors of any terms of the Contract Documents, Performance Bond or Applicable Laws; or (5) failure by Surety or its contractors to follow instructions of the County for performance of the Work or for performance of the Work within the Contract Time. By executing its Performance Bond incorporating the terms of the Construction Contract, Surety shall be deemed to have agreed, without limitation, to the provisions of this Paragraph 15.1.6 as constituting a binding obligation of Surety under its Performance Bond that shall control over any conflicting provisions set forth in the Performance Bond.

15.1.7 Conversion. In the event a termination for cause by the County is adjudged by a court or by binding arbitration conducted in accordance with the Contract Documents to have been wrongful, such termination shall be deemed converted to a termination for convenience pursuant to Section 15.3, below, in which case Contractor agrees to accept such amount, if any, as permitted by Paragraph 15.3.3, below, as its sole and exclusive compensation and agrees to waive any right to recovery of any other compensation or Loss, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity or other consequential, direct, indirect or incidental damages, of any kind.

15.1.8 Substantial Performance Waived. The legal doctrine that a contractor may recover for substantial performance of a building contract is to have no application to the Construction Contract. Any Event of Contractor Default, whether occurring before or after the Work is Substantially Completed, shall be deemed material and shall give rise to the right of County to exercise its remedies permitted under the Contract Documents or Applicable Laws.

15.1.9 Cross Default. Contractor agrees that a breach of any other agreement between Contractor and County, whether related or unrelated to the Project, that is not cured in accordance with the terms of such other agreement constitutes an Event of Contractor Default under the Construction Contract, thereby entitling County to assert all its rights and remedies hereunder including, but not limited to, a specific right of off set by County against any amounts otherwise payable to Contractor under the Construction Contract or any other agreement between Contractor and County.

15.1.10 Rights Cumulative. All of County's rights and remedies under the Contract Documents are cumulative, and shall be in addition to and not a limitation upon those rights and remedies available under Applicable Laws.

15.1.11 Materiality. Designation in the Contract Documents of certain defaults as "material" shall not be construed as implying that other defaults not so designated are not material nor as limiting County's right to terminate or exercise its other rights or remedies for default to only material defaults.

15.1.12 County Action. No termination or action taken by County after termination shall prejudice any rights or remedies of County provided by Applicable Laws or by the Contract Documents, including, without limitation, the right of County to proceed against Contractor to recover all Losses suffered by reason of Contractor's default.

15.2 SUSPENSION BY COUNTY FOR CONVENIENCE

15.2.1 Suspension Order. Without limitation to the County's rights under Section 15.1, above, County may, at any time, for its convenience and without the occurrence of any Event of Contractor Default, order Contractor, in writing, to suspend, delay or interrupt performance of the Work, in whole or in part. Upon receipt of such an order, Contractor shall comply with its terms and take all reasonable steps to minimize additional costs that are incurred applicable to the portion of the Work suspended, delayed or interrupted by County.

15.2.2 Resumption. If an order issued by the County pursuant to this Section 15.2 is canceled or expires, Contractor shall resume and continue with the previously affected portion of the Work. In such event, Contractor shall be entitled to a Contract Adjustment for additional Allowable Costs necessarily caused by such order and compensation allowed under Section 3.3 of the Construction Contract for Compensable Delay; provided, however, that no such Contract Adjustment shall be made: (1) to the extent that performance either is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor or any of the Subcontractors is responsible or for which Contractor would not be entitled to a Contract Adjustment; (2) to the extent that a Contract Adjustment on account thereof is made or denied under another provision of the Contract Documents; or (3) for any general or specific escalation in prices of the Work.

15.2.3 Limitation. The provisions of this Section 15.2 shall not apply unless a written order is issued by County pursuant to this Section 15.2.

15.3 TERMINATION BY COUNTY FOR CONVENIENCE

15.3.1 Right to Terminate for Convenience. Without limitation upon any of County's other rights or remedies under the Contract Documents or Applicable Laws, County shall have the option, at its sole discretion and without the occurrence of any Event of Contractor Default or any other cause, to terminate the Construction Contract or Work, in whole or in part, for its convenience by giving five (5) Days written notice to Contractor.

15.3.2 Contractor Obligations. Upon receipt of notice of termination for convenience pursuant to this Section 15.3, Contractor shall, unless such notice directs otherwise, comply with all of the provisions of Paragraph 15.1.4, above.

15.3.3 Contractor Compensation. Following a termination for convenience pursuant to this Section 15.3 and within sixty (60) Days after receipt of a complete and timely Application for Payment from Contractor, an accounting shall be conducted in accordance with the process set forth in Paragraph 15.1.5, above. In such event, the amount due to Contractor shall be the Contractor Amount as calculated in the same manner provided for in Paragraph 15.1.5, above, except that there shall be added to the calculation of the Contractor Amount an amount for: (1) the reasonable, actual and direct Allowable Costs incurred and paid by Contractor (and not by Subcontractors) for (a) demobilizing Contractor's facilities from the Site, and (b) Contractor's administering the close out of its participation in the Project for a period of no longer than fifteen (15) Days; plus (2) a markup to Contractor on the Contractor's Allowable Costs incurred under Clause (1) of this Paragraph 15.3.4 that is based on the percentage for Allowable Markup that Contractor is permitted to charge pursuant to Article 7, above, for Compensable Changes involving Extra Work that is Self-Performed Work.

15.3.4 Exclusive Compensation. Contractor agrees to accept the compensation allowed under Paragraph 15.3.3, above, as its sole and exclusive compensation in the event of a termination by County for convenience and waives any claim for Loss related to County's termination for convenience, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect, or incidental damages, of any kind.

15.3.5 Subcontractors. Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts with the Subcontractors permitting termination for convenience by Contractor on terms that are consistent with, and that afford no greater rights of recovery against Contractor for termination than are afforded to Contractor under, this Section 15.3.

15.4 TERMINATION BY CONTRACTOR

15.4.1 Contractor's Remedies. Subject to the provisions of Paragraph 15.4.2, below and Paragraph 15.4.3, below, Contractor's sole right to terminate the Construction Contract shall be its right to terminate, for cause only, upon the occurrence of either of the following:

.1 the entire Work is stopped for one hundred sixty (160) consecutive Days, through no act or fault of Contractor or any of the Subcontractors, of any Tier, or any employee or agent of any of them, due to issuance of an order of a court or other Governmental Authority or due to a declaration of a national emergency making material unavailable; or

.2 the entire Work is suspended by Contractor, in accordance with a proper exercise by Contractor of its rights under Section 9.8, above, for a continuous period of thirty (30) Days.

15.4.2 Notice of Intention to Terminate. If one of the reasons to terminate as described in Paragraph 15.4.1, above, exists, Contractor may, upon thirty (30) Days written notice to County, terminate the Construction Contract and recover from County as its sole and exclusive compensation such sums as are permitted under Paragraph 15.3.3, above.

15.4.3 Continuous Performance. Provided that Contractor is paid undisputed sums due in accordance with the requirements of the Construction Contract, Contractor shall not stop, delay or interrupt continuous performance of the Work by reason of any dispute or disagreement with County, including, without limitation, any disputes or disagreements over payments of money claimed due under the Contract Documents.

15.5 WARRANTIES

All obligations of Contractor and the Subcontractors under the Contract Documents with respect to warranties and guarantees of the Work will continue in force and shall apply, notwithstanding a termination or other discontinuance of the Work by County or Contractor pursuant to an exercise of rights by either under this Article 15, to any portion of the Work that at the time of such termination or discontinuance has been completed or partially completed by Contractor to the point that it is substantially ready (exclusive of any incidental work that may be needed to connect such portion to other Work to other Work or Existing Improvements or to energize such portion of the Work for operation) for use or occupancy by County.

**ARTICLE 16
NON-DISCRIMINATION**

16.1 NON-DISCRIMINATION IN SERVICES

16.1.1 Contractor must, in accordance with Applicable Laws, not discriminate in the provision of services hereunder because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability. For the purpose of this Section 16.1, discrimination in the provision of services may include, but is not limited to the following:

- .1 denying any person any service or benefit or the availability of a facility;
- .2 providing any service or benefit to any person which is not equivalent to, or is in a non-equivalent manner or at a non-equivalent time from, that provided to others;
- .3 subjecting any person to segregation or separate treatment in any manner related to the receipt of any service;
- .4 restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; or
- .5 treating any person differently from others in determining admission, enrollment, eligibility, membership, or any other requirement or condition which persons must meet in order to be provided any service or benefit.

16.1.2 Contractor shall ensure that services are provided without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability.

16.1.3 Contractor shall establish and maintain written procedures under which any person applying for, performing or receiving services hereunder, may seek resolution from Contractor of a complaint with respect to any alleged discrimination. Such persons shall be advised by Contractor of these procedures. A copy of such procedures shall be posted by Contractor in a conspicuous place, available and open to the public, in each of Contractor's facilities where services are provided hereunder.

16.2 NON-DISCRIMINATION IN EMPLOYMENT

Contractor must, in accordance with Applicable Laws, not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability. Without limitation to any other provisions of this Section 16.2, in the performance of the obligations under the Contract Documents, Contractor and the Subcontractors shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code §§12940-48) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S.C. §§200e - 217), whichever is more restrictive. Contractor and the Subcontractors shall ensure that qualified applicants are employed and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with requirements of Applicable Laws. Such shall include, but not be limited to, the following:

- .1 employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; or
- .2 selection for training, including apprenticeship.

16.2.1 Contractor agrees to post in conspicuous places in each of Contractor's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of this Section 16.2.

16.2.2 Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with requirements of Applicable Laws.

16.2.3 Contractor shall send to each labor union, or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or the workers' representative of Contractor's commitments under this Section 16.2.

16.2.4 Contractor certifies and agrees that it will deal with the Subcontractors, bidders and vendors without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with the requirements of Applicable Laws.

16.2.5 In accordance with Applicable Laws, Contractor shall allow duly authorized representatives of the County, State, and Federal government access to its employment records during regular business hours in order to verify compliance with the provisions of this Section 16.2. Contractor shall provide such other information and records as such representatives may require in order to verify compliance with the provisions of this Section 16.2.

16.2.6 If County finds that any of the provisions of this Section 16.2 have been violated by Contractor or any of the Subcontractors, such violation shall constitute a material breach of the Construction Contract for which County may cancel, terminate or suspend the Construction Contract. While County reserves the right to determine independently that the anti-discrimination provisions of the Construction Contract have been violated, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that Contractor or the Subcontractor has violated State or Federal anti-discrimination laws shall constitute a finding by County that Contractor or the Subcontractor has violated the provisions of this Section 16.2.

16.2.7 Contractor hereby agrees that it will comply with §504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794) and similar Applicable Laws relating to employment of or access to persons with disabilities, all requirements imposed by applicable Federal Regulations, and all guidelines and interpretations issued pursuant thereto, to the end that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of Contractor receiving Federal Financial Assistance.

END OF GENERAL CONDITIONS

**SPECIAL PROVISIONS
AND
DETAILED SPECIFICATIONS**

June 2012

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SPECIAL PROVISIONS

SECTION 6.1 – GENERAL

6.1.1 References – References made in these Special Provisions or Detailed Specifications to the "Standard Specifications" refer to the "Greenbook" Standard Specifications for Public Works Construction, current edition, including supplements. Standard Specifications of the American Society for Testing and Materials shall be designated by ASTM and the appropriate number of the standard. Unless otherwise specified, wherever the words "State Standard Specifications" are used in these Special Provisions or Detailed Specifications they shall mean the Standard Specifications of the State of California, Department of Transportation, current edition. Whenever the words "Caltrans Standards" are used they shall mean the Standard Plans of the State of California, Department of Transportation, current edition.

In case of conflict between the drawings and the specifications, the drawings shall govern; in case of conflict between the referenced specifications and these specifications, the latter shall govern.

6.1.2 District – Throughout these specifications, the term "District" shall refer to the General Manager-Chief County of the Riverside County Flood Control and Water Conservation District (District). The term "District" refers to the General Manager-Chief County of the District acting directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

6.1.3 County - Throughout these specifications, the term "County" shall refer to the Economic Development Agency.

SECTION 6.2 THROUGH SECTION 6.4 – NOT USED

SECTION 6.5 – PROJECT SITE MAINTENANCE

Through all phases of construction, the Contractor shall comply with the provisions of Section 7-8 of the Standard Specifications. The Contractor shall also comply with South Coast Air Quality Management District Rule 403 "Fugitive Dust" and requirements set forth by the California Regional Water Quality Control Board. The Contractor shall provide the District and County a copy of the Stormwater Pollution Prevention Plan prior to construction. Before final acceptance of the work, the Contractor shall clean the work and the site of the work of all falsework, temporary structures, other construction materials and equipment, excess materials and rubbish, and shall leave the work and the site in a neat and presentable condition.

SECTION 6.6 – SPECIAL REQUIREMENTS

6.6.1 As-Built Drawings – Upon the completion of the project as determined by the District and County, but prior to acceptance, the Contractor shall provide redlined as-builts of the project to the appropriate agency maintaining the facility. After the redlined as-built drawings have been

approved by the District and County, a time will be scheduled for the County's representative to transfer the redlined information onto original mylars. At that time, the County's Engineer, duly registered in the State of California, shall review and sign the mylars as "as-built".

6.6.2 National Pollutant Discharge Elimination System (NPDES) – The Contractor shall comply with the requirements of State Water Resources Control Board Order No. 2009-0009-DWQ as amended by 2010-0014-DWQ, NPDES Area-Wide Municipal Stormwater Permit, hereafter referred to in this Section as the "Permit", issued by the California Regional Water Quality Control Board (CRWQCB) – Whitewater Region. This Permit regulates stormwater discharges associated with construction activities performed under the direction of a municipal stormwater permittee. The Contractor shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) in accordance with Section 6.21 "Stormwater and Non-Stormwater Pollution Control" of the these Detailed Specifications.

The Contractor's attention is directed to: 1) Section 6.21.2 "Special Provisions and Detailed Specifications" which allows the County to withhold progress payments if the Contractor fails to fully implement Section 6.21 "Stormwater and Non-Stormwater Pollution Control" or is deemed to be in non-compliance with the provisions of the Permit; 2) Section 6.21.3 "Storm Water Pollution Prevention Plan Preparation and Approval" which requires that a SWPPP be prepared and approved prior to the Pre-Construction meeting; and 3) Section 6.21.5 "Storm Water Pollution Prevention Plan Implementation" which allows the County or County to suspend construction operations if the Contractor fails to implement the approved SWPPP and any amendments thereto.

Throughout the term of this contract, the total soil-disturbed area of the project site shall be less than one (1) acre.

6.6.3 Construction Tolerances – Variation in alignment, grade and dimensions of the structures and structural components from the established alignment, grade and dimensions shown on the drawings shall be within the tolerances specified in the following:

Departure from established alignment		2 inches on tangents 4 inches on curves
Departure from established profile grade	Channel bottoms, channel sideslopes in cut and fill, levee and access road sideslopes in cut	Zero above and 3 inches <u>below</u> the specified grade
	Top surfaces of levees and access roads in both cut and fill, levee and access road side slopes in fill	Zero below and 3 inches <u>above</u> the specified grade

Regardless of the construction tolerances specified, the excavation and grading shall be performed so that the finished surfaces are in uniform planes with no abrupt breaks in the surface.

Table B – Tolerances for Trapezoidal Concrete Lined Channels and Levees

Table B – Tolerances for Trapezoidal Concrete Lined Channels and Levees		
Departure from established alignment		2 inches on tangents 4 inches on curves
Departure from established profile grade		1 inch
Variation in thickness of lining sideslopes and invert		5 percent of specified thickness provided average thickness is maintained
Variation from specified width of section at any height		0.0025 times specified width W plus 1 inch. 0.0025W + 1 inch
Variation from specified height of lining		0.005 times specified height H plus 1 inch. 0.005H + 1 inch
Variation in surfaces (gradual)	Invert Sideslopes	¼ inch in 10 feet ½ inch in 10 feet
Variation in surfaces (abrupt)		¼ inch

Gradual Variation tolerance as measured by placing a 10-foot straight edge anywhere on the finished concrete structure within 72 hours after concrete placement. The gap at any point between the straight edge and the concrete shall not exceed the specified amount.

Table C – Tolerances for Formed, Cast-in-Place Concrete Structures		
Departure from established alignment		1 inch on tangents 2 inches on curves
Departure from established profile grade		1 inch
Inside dimensions		0.005 times specified dimension
Variation from the plumb or the specified batter in the lines and surfaces of walls, piers and in arises	Exposed, in 10 feet Backfilled, in 10 feet	½ inch 1 inch
Variation in cross-sectional dimensions		Minus ¼ inch Plus ½ inch
Variation in surfaces (gradual)	Invert Soffits, Walls, Sideslopes	¼ inch in 10 feet ½ inch in 10 feet
Variation in surfaces (abrupt)		¼ inch

Table D – Tolerances for Reinforcing Steel Placement		
Variance from indicated position	Spacing between adjacent bars and the distance between layers of bars	one bar diameter nor more than one inch
Concrete cover measured perpendicular to steel in the direction of tolerance		¼ inch

6.6.4 Confined Space – The Contractor shall submit, to the County, a confined space procedure specific to the project. The procedure shall comply with requirements contained in California Code of Regulations, Title 8 Section 5158, Other Confined Space Operations, Section 5157, Permit Required Confined Space and Riverside County Flood Control and Water Conservation District Confined Space Procedures, SOM-18. The procedure shall be reviewed and approved by the County prior to the issuance of a Notice to Proceed.

The procedure shall provide for recording of data to develop a history of acceptable atmosphere within the confined space. That history will include:

1. Daily calibration of a direct reading confined space meter by trained personnel.
2. Daily monitoring and recording of the confined space atmosphere with a calibrated direct reading confined space meter.
3. Records of Items 1 and 2 shall be maintained onsite and copies given to the County.
4. The records shall indicate if readings are of natural or mechanically enhanced ventilation.

The Contractor will be required to keep a direct reading confined space meter onsite for the duration of the contract. The meter shall be calibrated daily and shall be made available for the District's or County's use upon request.

SECTION 6.7 THROUGH SECTION 6.9 – NOT USED

DETAILED SPECIFICATIONS

SECTION 6.10 THROUGH SECTION 6.13 – NOT USED

SECTION 6.14 – MOBILIZATION

6.14.1 Description - The contract item Mobilization shall consist of expenditures for all preparatory work and operations, including but not limited to, those costs necessary for the movement of personnel, equipment, supplies and incidentals to the project site; for the establishment of all offices, buildings, construction yards and other facilities necessary for work on the project; and for all other work and operations which must be performed or costs incurred prior to beginning work on the various contract items on the project site as well as the related demobilization costs anticipated at the completion of the project.

6.14.2 Payment - The amount credited for Mobilization on each monthly progress payment shall be equal to the total of the amounts credited for work on all the other contract items for that monthly progress payment, up to a cumulative limit of eighty percent (80%) of the lump sum price bid for Mobilization. The remaining twenty percent (20%) of the lump sum price bid for Mobilization will be paid with the final payment.

Payment of the lump sum contract price for Mobilization shall constitute full compensation for all labor, materials, equipment, and all other items necessary and incidental to completion of this item of work.

The deletion of work or the addition of extra work as provided for herein shall not affect the price paid for Mobilization.

SECTION 6.15 – WATER CONTROL

6.15.1 Description – This section covers the contract item Water Control. Watersheds and/or urban runoff areas are tributary to the project site at various locations, but do not necessarily follow the alignment of the project under current conditions. Surface water in varying quantities can be expected at any time of the year, and substantial runoff can be expected during periods of rainfall. All bidders shall make their own determination regarding what the surface and/or groundwater conditions will be at the time of construction, and their impact on the bidder's operations and construction phasing.

6.15.2 Water Control - The contract item Water Control includes the control and/or diversion of surface runoff as well as groundwater within the work area as required to complete the work. All work shall be carried on in areas free of water. Care should be exercised so that runoff or diversion flows do not erode, undermine or otherwise damage either facilities which have been constructed or adjacent private properties. The responsibility for the protection of all existing and proposed improvements lies with the Contractor.

6.15.3 Measurement and Payment - The methods of controlling both surface and groundwater will be the responsibility of the Contractor. The contract lump sum price paid for Water Control shall include full compensation for all direct and indirect costs incurred under this section, and for doing all the work involved in controlling surface runoff and groundwater within the construction area, as specified in these Detailed Specifications, and as directed by the County.

Payment will be made on a basis of the percentage of the work completed on the entire project.

SECTION 6.16 – CLEARING AND MISCELLANEOUS WORK

6.16.1 Description – This section covers the contract item Clearing and Miscellaneous Work as required for construction of the work. All objectionable materials shall be removed and disposed of outside of the limits of the construction easements and permanent rights of way.

6.16.2 Clearing and Miscellaneous Work – The contract item Clearing and Miscellaneous Work includes the removal and disposal of all vegetation, trees, roots, stumps, fences, excluding those items defined specifically as excavation in the appropriate section.

Included in this item are the following:

1. The temporary relocation of signs.
2. The removal and disposal of trees.

Finally, included in this item are those types of work as shown on the drawings not specified for pay under any other individual contract item.

6.16.3 Payment - The contract price paid for Clearing and Miscellaneous Work shall be full compensation for all costs incurred under this section.

This payment will be made on a basis of the percentage of work completed on the entire project.

SECTION 6.17 – EARTHWORK

6.17.1 General Excavation Requirements – Channel excavation shall be in conformance with Section 300-7, and the structure excavation shall be in conformance with Section 300-3 of the Standard Specifications. Access to trenches shall be in conformance with Section 306-1.1.4 and the manner of bracing excavations shall be in conformance with Section 306-1.1.6 of the Standard Specifications.

Excavation shall be kept to the minimum widths required for efficient placing of the revetment and the construction of the various other concrete structures.

In excavating for surfaces against which concrete is to be placed, care shall be exercised in removing the final lift. Upon completion of excavation for slope revetment, surfaces against which concrete is to be placed shall be free of debris, mud or ponded water.

The foundation for all concrete structures including concrete channels and sideslopes will be inspected and tested after excavation. The subgrade shall be compacted to ninety (90) percent relative compaction prior to the placement of concrete.

Material which will not provide a suitable foundation shall be removed and replaced with compacted select material as directed by the County.

Any overexcavation shall be filled with select material compacted to ninety (90) percent relative compaction and meeting the material requirements for backfill.

The Contractor shall remove slides and materials eroding into the work, and the slopes and grades refinished to original grades as specified.

The Contractor shall dispose of all surplus excavated material outside the limits of the construction easements and permanent rights of way.

6.17.2 Excavation – The contract item Excavation covers the removal of all material including, but not limited to asphalt, aggregate base, abandoned pipelines, miscellaneous debris, and concrete from within the excavation paylines as specified and as required for the construction and installation of the rock slope revetment, maintenance access road, or maintenance access ramp.

6.17.3 Rock Excavation – The contract item Rock Excavation shall include any material which in the opinion of the County cannot be excavated with conventional excavating equipment, such as a 235C Caterpillar excavator with a medium stick and rock ripping bucket, or equivalent equipment and is removed by drilling and blasting, or mechanically fracturing by means other

than conventional excavating equipment and occupies an original volume of at least one half cubic yard. When rock is encountered, it shall be stripped of earth and County's representative notified and given proper time to observe the rock before removal. Any rock removed which has not been measured by the County's representative will not be classified as rock excavation. Excavation in excess of the depth required for the structures shall be corrected by placing filter material, at no additional expense to the County. Should the Contractor exhaust conventional equipment and methods for rock excavation and removal and desires to use explosives it shall comply with Section 14.2 and the following:

Blasting, storage and handling of explosives shall be in accordance with the Construction Safety Orders of the Division of Industrial Safety of the California Department of Industrial Relations, Federal Safety Requirement and other authorities which have jurisdiction.

Blasting shall be done only by skilled operators under the direction of a licensed foreman.

The Contractor shall identify all property and structures which may be affected by blasting and shall take all safety precautions and protective measures to prevent damage or injury. All personal injury or damage to persons or property of any nature shall be the responsibility of the Contractor.

The Contractor agrees to indemnify and hold the District and County, its officers, agents, and employees harmless from any and all liability claims, costs and expenses.

For project site subsurface conditions please refer to the attached soils report.

6.17.4 General Fill and Backfill Requirements – Whenever fill is specified or required (except for pipe backfill) the work shall be performed as set forth in Sections 300-4.1 through 300-4.8 of the Standard Specifications. Backfill for pipe and box shall conform to Section 306-1.3 of the Standard Specifications except as modified herein.

No backfill materials shall be placed against the outside walls of cast-in-place concrete structures until the concrete has developed eighty (80) percent of its design strength.

No fill or traffic will be permitted on the top of any cast-in-place concrete structure, until the concrete in the structure has attained its design strength. Test cylinders taken by the County's testing firm will determine compressive strength.

Regardless of the method of densification, backfill material shall not be placed against any reinforced concrete structure until the structure has been inspected and approved for backfilling by the District and/or County.

Densification of backfill will be accomplished by either mechanical methods or water densification methods as described in (1) and (2) below. All relative compaction tests will be made by the County in conformance with Test Method No. California 216. Whenever relative compaction is specified to be determined by Test Method No. California 216, the in-place density may be determined by Test Method No. California 231. The wet weight or dry weight basis and English Units of measurement may be used at the option of the County.

Mechanical Compaction – Backfill shall be mechanically compacted by means of tamping rollers, or other mechanical tampers. Impact-type pavement breakers (stompers), will not be permitted unless otherwise approved by the County.

All backfill material for structures shall be placed in horizontal, uniform layers and shall be brought up uniformly on each side of the structure. The thickness of each layer of backfill shall not exceed 8 inches before compaction unless otherwise approved by the County. For hand directed mechanical compactors, the thickness of each layer shall not exceed 4 inches before compaction.

Water Densification – Water Densification of bedding and backfill shall be by jetting and shall only be used when approved by the agency responsible for maintenance of the project. Jetting for bedding and backfill shall conform to Section 306-1.3.3 of the Standard Specifications except as modified as follows:

Jetting may be allowed, when approved by the County, in conditions where soils of the trench walls have a sand equivalent less than 15, provided the Contractor takes appropriate action to drain the water.

Undensified lifts shall not exceed 4 feet.

Suitable backfill material to be jetted shall have a sand equivalent of 30 or greater.

If Cast-in-Place Concrete Pipe is used, jetting will not be permitted.

Jetting of the top 4 feet of backfill measured from the subgrade plane will not be permitted in roadway areas.

Approval to use specific methods and compaction equipment shall not be construed as guaranteeing or implying that the use of such methods and equipment will not result in damage to adjacent ground, existing improvements, or improvements installed, nor shall it be construed as guaranteeing proper compaction. The Contractor shall make his own determination in this regard.

All backfill and bedding around structures and pipe shall be compacted to not less than ninety (90) percent relative compaction. Where such material is placed under existing or proposed paved roadways, the top 3 feet, measured from the subgrade plane, shall be compacted to ninety-five (95) percent and shall be compacted by Method (1).

Trench bottoms for structures and pipe shall be graded to provide firm and uniform bearing throughout the entire length of the structures and pipe.

Pipe and box bedding shall consist of well-graded granular material having a sand equivalent value of not less than 30 and be capable of being readily consolidated by jetting and vibrating. Jetting shall be as described by Method (2) Water Densification and the jet pipe shall be inserted at intervals of 3 feet maximum continuous along each side of the pipe. Gravel or crushed aggregate shall not be used for bedding material. Pipe and box bedding shall be placed to 1 foot above the top of the reinforced concrete pipe or box. The Contractor may use onsite

material for this pipe and box bedding subject to the approval of the County and provided it meets the requirements as set forth above. Should onsite material be unsatisfactory, the Contractor will be required to import suitable material.

Backfill material placed above the bedding shall consist of either select material from the excavation or imported material, as approved by the County.

When Slurry Cement Backfill is required it shall conform to Section 19-3.062 of the State Standard Specifications.

6.17.5 Testing – Compaction tests shall be performed as described below which represents the minimum required. Additional testing may be ordered by the County.

Mainline Trenches – A complete series of compaction tests shall be taken for each 4-foot thickness of backfill placed. Each series shall consist of tests taken at approximate maximum intervals of 300 feet. Each series shall begin at the top of the bedding zone.

Connector Pipe Trenches – Compaction tests shall be taken on 50% of the laterals, one test for each 4 feet of depth.

Any failed test shall result in a retest.

When water densification is requested, sand equivalent tests representing foundation soils and proposed backfill material shall be obtained at approximate maximum intervals of 1,000 feet. Additional tests may be necessary to define limits of suitable backfill material.

When testing is provided by the Contractor, a complete testing report shall be given to the County prior to placement of the street structural section or acceptance of the project, whichever occurs first.

6.17.6 Measurement – Excavation; Grouted Rock Excavation; and Backfill will not be measured for payment.

6.17.7 Payment – The contract prices paid for Excavation; Rock Excavation; and Backfill shall be considered as included in the various items of work involved and no additional compensation will be allowed therefore.

SECTION 6.18 – CONCRETE CONSTRUCTION

6.18.1 Description – This section includes the contract items various classes of Concrete.

6.18.2 General Requirements – Concrete for all purposes shall be composed of Portland Cement, aggregates, and water of the quantities and qualities herein specified and in the required proportions. The ingredients are to be well mixed and brought to the proper consistency and have a compressive strength at the age of 28 days of not less than the amount shown in the following tabulation for each type of work listed:

CONCRETE CLASS

TYPE OF WORK

POUNDS PER SQUARE INCH

B

Local Depressions, Cutoff Walls, Collars, Encasements, Curb and Gutter, Driveways, Sidewalk and Miscellaneous Concrete not otherwise specified

3000*

6.18.3 Material and Methods – All concrete materials, methods, forms and proportioning shall conform to Sections 51 and 90, and additionally, curb construction shall conform to Section 73 of the State Standard Specifications. Concrete test specimens shall be made in accordance with ASTM Designations C-31 and C-172. Tests for concrete compressive strengths shall be performed in accordance with the requirements of ASTM Designation C-39. Combined aggregate grading for all concrete shall be in conformance with Section 90-3.04 of the State Standard Specifications and the following tabulation for each type of work listed:

TYPE OF WORK

COMBINED AGGREGATE GRADING

Bridges, Retaining Walls, Trapezoidal Channel Slope Paving, Box Deck and Walls, Rectangular Channel Walls, Headwalls, Catch Basins, Drop Inlets, Local Depressions, Curb and Gutter, Driveways, Sidewalk, Cutoff Walls, Bulkheads, Collars, Encasements and Cast-in-Place Concrete Pipe, with diameters of less than 48" and other Miscellaneous Concrete not otherwise specified.

1" Maximum

Portland Cement Concrete shall conform to the requirements of Section 90 of the Standard Specifications except as follows:

Requirements on the construction plans for Portland Cement Concrete are modified to the PCC Class designations, as described in Section 90-1.01, "Description", of the Standard Specifications as follows:

Class "B" shall mean Class "3" except that the concrete shall contain not less than 550 pounds of cementitious material per cubic yard.

Minor Concrete shall mean Class "B" as defined above.

Whenever 28 day compressive strengths are specified no additional days will be allowed to obtain the specified strength.

Section 90-4.08, "Required Use of Mineral Admixtures", is replaced in its entirety as follows:

When the use of mineral admixtures in concrete is specified or is ordered by the County, the minimum amounts of mineral admixture and Portland Cement and the type of cement shall

be as specified or ordered. If the use of mineral admixture and cement and the cement type have not been specified or ordered, the concrete shall conform to one of the following:

The concrete shall contain "Type IP (MS) Modified" cement conforming to the provisions in Section 90-2.01, "Portland Cement", in an amount sufficient to satisfy the specified minimum cement content.

The concrete shall contain "Type II Modified" cement conforming to the provisions in Section 90-2.01, "Portland Cement", in an amount not less than 85 percent of the amount required to satisfy the specified minimum cement content. The concrete shall also contain a mineral admixture in an amount not less than 15 percent by weight of the amount of cement required to satisfy the specified minimum cement content. Where Section 90-1.01, "Description", specifies maximum cement content in pounds per cubic yard the total weight of Portland Cement and mineral admixture per cubic yard shall not exceed the specified maximum cement content.

Section 90-4.09, is replaced in its entirety and titled "Optional Use of Mineral Admixtures" as follows:

The Contractor will be permitted to replace up to 15 percent of the required Portland Cement, other than Type IP (MS) Modified or Type III cements, with a mineral admixture in all concrete except where high early strength has been specified or where the use of mineral admixtures is otherwise specified or prohibited. The weight of mineral admixture used shall be equal to or greater than the weight of Portland Cement replaced.

In the event that discrepancies are encountered, the option that provides the method, item or material with the greatest strength or utility shall be chosen, as directed by the County.

Fly Ash may be substituted for cement, up to a maximum of 15 percent by weight for all concrete. Fly Ash shall meet the standards of ASTM Designation: C-618. When Fly Ash is used, water reducing agents meeting ASTM Designation: C-494 will be permitted in amounts recommended by the supplier and approved by the County.

No other admixture shall be used in any class of concrete without written permission from the County.

Supplementing Section 90-1.01 of the State Standard Specifications, prior to placement of any concrete the Contractor shall submit mix designs for all types of concrete to be placed, to the County for approval. Supplementing Section 90-6.03 of the State Standard Specifications, concrete delivered to the job site shall be accompanied by a ticket containing the weight of each of the individual ingredients in the mix.

6.18.4 General Reinforcing Steel Requirements – Reinforcing steel for reinforced concrete boxes, bridges, retaining walls, rectangular channels, spillways and transition structures shall be Grade 60 Billet-Steel. For other reinforced concrete structures the reinforcement shall be Grade 40 Billet-Steel or greater as approved by the County. Cleaning, bending, placing and spacing of reinforcement shall conform to the applicable provisions of Section 52 of the State Standard Specifications and to the drawings. The Contractor shall furnish a "Certificate of Compliance" with the Specification of ASTM Designation: A-615. All splices shall conform to the

requirements of the latest edition of A.C.I. Manual, Standard 318. Splices requested by the Contractor for his convenience shall be subject to approval by the County.

6.18.5 Consistency – The consistency of the concrete shall be such as to allow it to be worked into place without segregation. Unless otherwise approved, the slump shall be 3 inches plus or minus 1 inch for all concrete, except the concrete for the Cast-in-Place Concrete Pipe shall have a slump of 2 inches plus or minus 1 inch.

The slump test shall be performed in accordance with the requirements of ASTM Designation: C-143. Slumps greater than those specified may be cause for rejection of the concrete by the County.

6.18.6 Placing – Supplementing Section 51-1.09 of the State Standard Specifications, concrete shall not be placed except in the presence of the County. The Contractor shall give reasonable notice to the County each time he intends to place concrete. Such notice shall be far enough in advance to give the County adequate time to inspect the subgrade, forms, steel reinforcement and other preparations for compliance with the specifications before concrete is delivered for placing.

Formed concrete shall be placed in horizontal layers in lifts of not more than 20 inches. Hoppers and chutes, pipes and "elephant trunks" shall be used as necessary to prevent segregation of the concrete.

6.18.7 Form Removal and Finish – Forms shall be removed only when the County has given his approval. Forms shall be removed in such a way as to prevent damage to the concrete. Supports shall be removed in a manner that will permit the concrete to take stresses due to its own weight uniformly.

Forms shall not be removed sooner than 16 hours after the concrete is placed. These times represent cumulative number of days and fractions of days, not necessarily consecutive, during which the temperature of the air adjacent to the concrete is above 50 degrees Fahrenheit. If the temperature falls below 50 degrees Fahrenheit at any time after the concrete is placed in the forms, the County will advise the Contractor of additional time required before forms can be removed.

The finish on all exposed formed surfaces shall conform to Section 51-1.18B Class 1 Surface Finish of the State Standard Specifications. A tight wood float finish will be required on the surface of trapezoidal channels and bridge decks, and excessive surface working will not be permitted. The exposed concrete surfaces shall be broomed in a transverse direction with a fine textured hair push broom to produce a uniform surface and eliminate float marks. Brooming shall be done when the surface is sufficiently set to prevent deep scarring. If directed by the County, a fine spray of water shall be applied to the surface immediately in advance of brooming.

Exposed corners of all concrete structures shall be finished with a 3/4" chamfer.

Concrete flatwork shall match adjacent surfaces. The concrete shall be struck off and tamped or vibrated until a layer of mortar has been brought to the surface. The top surface and face of curbs, gutters, catch basins and sidewalks shall be finished to match adjacent surfaces.

6.18.8 Curing – All concrete shall be prevented from drying for a curing period of at least seven (7) days after it is placed. Surfaces exposed to air during the curing process shall be kept continuously moist for the entire period or until curing compound is applied.

Formed surfaces shall be thoroughly wetted immediately after forms are removed and shall be kept wet until patching and repairs are completed. Water or covering shall be applied in such a way that the concrete surface is not eroded or otherwise damaged. Water for curing shall be clean and free from any substances that will cause discoloration of the concrete.

Concrete may be coated with curing compound in lieu of the continued application of moisture. The curing compound shall comply with the requirements of Section 90-7.01B of the State Standard Specifications. The curing compound shall be No. 5 White Pigmented Curing Compound conforming to the requirements of ASTM Designation: C-309, Type 2, Class B for all concrete surfaces other than for flatwork which shall be coated with a clear or translucent curing compound containing a red fugitive dye.

The curing compound shall be sprayed on the moist concrete surfaces as soon as free water has disappeared, but shall not be applied to any surface until patching, repairs and finishing of that surface are completed. The curing compound shall be thoroughly mixed immediately before applying, and shall be applied at a uniform rate of not less than one gallon per 150 square feet of surface.

6.18.9 Joints – Joints shall be made at the locations shown on the drawings, or as approved by the County.

Surfaces of construction joints shall be cleaned as set forth in Section 51-1.13 of the State Standard Specifications.

6.18.10 Drainage Apron – The contract item Drainage Apron covers the complete construction of this structure, and includes the joining to the existing concrete channel and reinforced concrete transition.

6.18.11 Measurement – Measurement for payment for the contract item Drainage Apron will be the number of each type constructed as specified.

Reinforcing Steel required for the construction of the reinforced concrete structures described in the appropriate sections will be in conformance with Section 52-1.10 of the State Standard Specifications.

No measurement or payment will be made for dowels, tie bars, tie wires, blocks, chairs and other accessories.

6.18.12 Payment – The contract prices paid for Drainage Apron items shall include full compensation for all costs incurred under this section.

SECTION 6.19 – STONEWORK

6.19.1 Description – This section covers Rock Slope Protection of various classes; Loose Rock Riprap; Grouted Rock Riprap; Gravel Base; and Rock Protection Fabric.

6.19.2 General – All rock materials shall meet the quality requirements of Section 72-2.02 of the State Standard Specifications.

Rock materials shall be blocky and predominantly angular in shape. Not more than 25% of the rock shall have a length more than 2.5 times the breadth or thickness. No rock shall have a length exceeding 3.0 times its breadth or thickness. All over-size rocks, as determined by the County, shall be removed.

Rock materials shall be placed on a firm dry foundation in conformance with Method B of Section 72-2.03 of the State Standard Specifications, however, additional placement effort shall be required to meet the lines and grades as shown on the drawings and to fill and chink oversize voids with selected rock to establish a stable interlock. Chinking of voids will not be required for rock specified to be concreted.

Concrete for concreted (grouted) rock shall be Class "B", and shall have a slump sufficient to allow gravity flow into the interstices of the rock with rodding and vibration. Concrete for concreted rock shall be placed in accordance with Section 72-5.04 of the State Standard Specifications except that total penetration of the rock blanket by the concrete will be required, and the outer rocks of the finished rock surface shall project approximately 9 to 12 inches from the concrete surface.

6.19.3 Rock Protection Fabric – Rock Protection Fabric placed beneath rock shall conform to Type "B" per Section 88-1.04 of the State Standard Specifications with the exception that the weight in ounces per square yard shall be a minimum of 10. A six-inch minimum layer of backing material shall be placed over the fabric prior to placing rock unless otherwise shown on the plans.

6.19.4 Loose Rock Riprap – The contract item Loose Rock Riprap covers the complete construction of the Loose Rock Riprap Revetment, including Excavation, Rock Excavation, Backfill, and Rock Protection Fabric to the limits shown on the construction drawings.

6.19.5 Grouted Rock Riprap – The contract item Grouted Rock Riprap covers the complete construction of the Grouted Rock Riprap Revetment, including Excavation, Rock Excavation, Backfill, Concrete, and Rock Protection Fabric to the limits shown on the construction drawings.

6.19.6 Measurement – Measurement for payment for the contract items Loose Rock Riprap; and Grouted Rock Riprap will be the number of cubic yards placed as specified, measured to the neat lines as shown on the drawings.

6.19.7 Payment – The contract prices paid for the various Stonework items shall include full compensation for all costs incurred under this section.

SECTION 6.20 – AGGREGATE BASE

6.20.1 Description – This section covers Aggregate Base Road, and shall consist of the complete construction of the 3” thick aggregate base maintenance road as indicated on the plans, and Standard Drawings for Riverside County Flood Control.

6.20.2 Aggregate Base Road – AB material shall conform to the requirements of subsection 200-2.2, "Crushed Aggregate Base", and Section 301-2, "Untreated Base" of the Standard Specification.

6.20.3 Measurement – Measurement for payment of the contract item Aggregate Base Road will be the number of square feet for all aggregate base placed within standard paylines as indicated on the drawings, and shall include the Vehicular Turn Around Area, and the 15 foot wide Maintenance Access Road. No allowance will be made for aggregate base placed outside said dimensions unless otherwise ordered by the County.

6.20.4 Payment – The contract price paid for Aggregate Base Road shall include full compensation for all costs incurred under this section.

SECTION 6.21 – STORMWATER AND NON-STORMWATER POLLUTION CONTROL

6.21.1 Description – This section covers the contract item Stormwater and Non-Stormwater Pollution Control. The contract item Stormwater and Non-Stormwater Pollution Control shall include preparing, obtaining approval of, amending and implementing Contractor's Storm Water Pollution Prevention Plan (SWPPP).

6.21.2 General Requirements – Stormwater and Non-Stormwater Pollution Control work shall conform to the requirements in the latest version of Caltrans Storm Water Quality Handbooks, entitled "**Construction Site Best Management Practices (BMPs) Manual**" and "**Storm Water Pollution Prevention Plan (SWPPP) and Water Pollution Control Program (WPCP) Preparation Manual**". Copies of the "Construction Site BMPs Manual" and "SWPPP and WPCP Preparation Manual", hereafter referred to collectively as the "Caltrans Handbooks", may be obtained from the California Department of Transportation Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California, 95815-3800. Telephone: 916.445.3520. Copies of the Caltrans Handbooks can also be downloaded from the Caltrans internet site at <http://www.dot.ca.gov/hq/construc/stormwater/manuals.htm>.

The SWPPP shall identify site specific BMPs to be implemented during and construction to minimize the potential pollution of stormwater runoff and receiving waters. The identified BMPs shall be practices designed to minimize or eliminate the discharge of pollutants from the construction site and Contractor's construction activities, including, but not limited to:

1. Good housekeeping practices for solid and sanitary/septic waste management, vehicle and equipment cleaning/maintenance, and material handling and storage.
2. Construction procedures such as stabilized construction access points, scheduling/phasing to minimize areas of soil disturbance, soil stabilization and erosion/sediment control.

The SWPPP shall also stipulate an ongoing program for monitoring and maintenance of all BMPs.

SWPPP – The Contractor shall submit a SWPPP certified by the Contractor's Qualified SWPPP Developer (QSD) for Owner review and approval.

The Contractor shall, at a minimum, provide and/or prepare the following:

1. Name and contact information for the Contractor's Qualified SWPPP Practitioner (QSP) and QSD
2. Contractor name and contact information
3. Contractor site contact person and emergency contact person information
4. Verification of disturbance area due to construction
5. Construction commencement date
6. Anticipated construction completion date
7. Construction Activity Schedule/BMPs Installation Schedule
8. Name and contact information for personnel responsible for pre-storm, post-storm and storm event BMP inspections – this should be the project's QSP
9. List of all subcontractors that will be working on the project
10. Review and finalize water pollution control drawings
11. Upload pertinent data into the SMARTS system

In the event the District or County incurs any Administrative Civil Liability or Mandatory Minimum Penalty (fine) imposed by the California Regional Water Quality Control Board, as a result of Contractor's failure to fully implement the provisions of this section and permit requirements, "Stormwater and Non-Stormwater Pollution Control", the County may, in the exercise of his sole judgment and discretion, withhold from payments otherwise due Contractor a sufficient amount to cover the Civil Liability. Liability for "Negligent Violations" may be in an amount up to \$50,000 per day per deemed occurrence while "Knowing Violations" can result in fines as high as \$250,000 and imprisonment.

The Contractor shall be responsible for all costs and for any liability imposed by law as a result of the Contractor's failure to comply with the requirements set forth in this section, "Stormwater and Non-Stormwater Pollution Control", including but not limited to, compliance with the applicable provisions of the Caltrans Handbooks, and Federal, State, and local regulations. For the purpose of this paragraph, costs and liabilities include, but are not limited to, fines, penalties and damages whether assessed against the District, County or the Contractor, including those levied under the Federal Clean Water Act and the State Porter-Cologne Water Quality Act.

The Contractor shall become fully informed of and comply with the applicable provisions of the Caltrans Handbooks, and Federal, State and local regulations that govern the Contractor's activities and operation pertaining to both stormwater and non-stormwater discharges from both the project site and areas of disturbance outside the project limits during construction. The Contractor shall, at all times, keep copies of the approved SWPPP and all amendments at the project site. The PPP shall be made available upon request of a representative of the SWRCB,

CRWQCB, United States Environmental Protection Agency (USEPA) or local stormwater management agency. Requests by the public shall be directed to the County.

The Contractor is solely and exclusively responsible for any arrangements made between the Contractor and other property owners or entities that result in disturbance of areas or construction activities being conducted outside the limits of the designated rights-of-way and temporary construction easements as shown on the project drawings.

6.21.3 SWPPP Preparation and Approval - The Contractor shall prepare and obtain approval of the SWPPP as part of the Stormwater and Non-Stormwater Pollution Control work for this contract. The Contractor shall prepare the SWPPP in accordance with Section 3, "Preparing a Water Pollution Control Program (WPCP)", of the Caltrans Storm Water Quality Handbooks, entitled "**Storm Water Pollution Prevention Plan (SWPPP) and Water Pollution Control Program (WPCP) Preparation Manual**" and these Detailed Specifications.

In case of conflict between the Caltrans Handbooks and these Detailed Specifications, the Detailed Specifications shall govern.

Within five (5) working days after the award of the contract, the Contractor shall submit two (2) copies of the SWPPP to the County for review and approval. The Contractor shall allow ten (10) working days for the County to review the SWPPP. If revisions are required as determined by the County, the Contractor shall revise and resubmit the SWPPP within three (3) working days of receipt of the County's comments and shall allow ten (10) working days for the County to review the revisions. The Contractor shall submit four (4) hard copies and one (1) pdf copy of the approved SWPPP to the County prior to the pre-construction meeting. **The Contractor must have an approved SWPPP prior to the pre-construction meeting.**

The objectives of the SWPPP shall be to identify all pollution sources associated with Contractor's construction activities that may adversely affect the quality of stormwater discharges and receiving waters; to identify all non-stormwater discharges; to identify, construct, implement and maintain water pollution control best management practices, hereafter referred to as "BMPs"; to reduce to the maximum extent practicable pollutants in both stormwater and authorized non-stormwater discharges from the construction site during construction; and to develop a maintenance schedule for BMPs after construction is completed under this contract.

The SWPPP shall incorporate BMPs in each of the following categories:

1. Soil stabilization practices
2. Sediment control practices
3. Sediment tracking control practices
4. Wind erosion control practices
5. Non-stormwater management, and waste management and disposal control practices

Specific objectives and minimum requirements for each category of BMPs are contained in the Caltrans Handbooks. The Contractor shall consider the objectives and minimum requirements presented in the Caltrans Handbooks for each of the above categories. When minimum requirements are listed for any category, the Contractor shall incorporate one or more of the listed minimum BMPs required into the PPP and implement them on the project to meet

the pollution control objectives for the category. In addition, the Contractor shall consider other BMPs presented in the Caltrans Handbooks to supplement the minimum BMPs required when necessary to meet the objectives of the PPP. The Contractor shall document the selection process in accordance with the procedure specified in the Caltrans Handbooks.

The Contractor shall not assume that the minimum BMPs required for each category presented in the Caltrans Handbooks are adequate to meet the pollution control objectives. The Contractor may use other effective BMPs, as approved by the County, in addition to the minimum BMPs required in the Caltrans Handbooks to achieve the pollution control objectives.

The SWPPP shall include all of the following items in the order given below:

1. Title Page
2. Table of Contents
3. Project Description and Contractor's Certification
4. Project Information
5. Pollution Sources and BMPs
6. Water Pollution Control Drawings
7. A copy of the Amendments, if any
8. Amendment Log
9. Maintenance, Inspection, and Repair Program
10. Inspection Log
11. Construction Site Inspection Checklist
12. Current Inventory of BMP related materials, and
13. Mobilization Plan for BMP deployment.

The following notes (or notes of substantially similar intent) that address pollution prevention to the Maximum Extent Practicable during the construction phase of a project on a year-round basis need to be placed on the Stormwater and Non-Stormwater Pollution Control Drawings:

- ◆ Erosion control BMPs shall be implemented and maintained to minimize and/or prevent the entrainment of soil in runoff from disturbed soil areas on construction sites.
- ◆ Sediment control BMPs shall be implemented and maintained to prevent and/or minimize the transport of soil from the construction site.
- ◆ Stockpiles of soil shall be properly contained to eliminate or reduce sediment transport from the site to streets, drainage facilities or adjacent properties via runoff, vehicle tracking or wind.
- ◆ Appropriate BMPs for construction-related materials, wastes, spills or residues shall be implemented to eliminate or reduce transport from the site to streets, drainage facilities or adjoining properties by wind or runoff.
- ◆ Runoff from equipment and vehicle washing shall be contained at construction sites and must not be discharged to receiving waters or the local storm drain system. Washwaters or rinsate from ready mix, concrete, or cement vehicles must be handled appropriately and may not be discharged to receiving waters or the storm drain system.

- ◆ All construction contractor and subcontractor personnel are to be made aware of the required best management practices and good housekeeping measures for the project site and any associated construction staging areas.
- ◆ At the end of each day of construction activity all construction debris and waste materials shall be collected and properly disposed in trash or recycle bins.
- ◆ Construction sites shall be maintained in such a condition that a storm does not carry wastes or pollutants off the site. Discharges other than stormwater (non-stormwater discharges) are prohibited, except as authorized by an individual NPDES permit or the State-wide General Permit for Storm Water Discharges Associated with Construction Activity. Potential pollutants include but are not limited to: solid or liquid chemical spills; wastes from paints, stains, sealants, solvents, detergents, glues, lime, pesticides, herbicides, fertilizers, wood preservatives and asbestos fibers; paint flakes or stucco fragments; fuels, oils, lubricants and hydraulic, radiator or battery fluids; concrete and related cutting or curing residues; floatable wastes; wastes from engine/equipment steam cleaning or chemical degreasing; wastes from street cleaning; and super-chlorinated potable water from line flushing and testing. During construction, disposal of such materials should occur in a specified and controlled temporary area onsite physically separated from potential stormwater runoff, with ultimate disposal in accordance with local, State and Federal requirements.
- ◆ Discharging contaminated groundwater produced by dewatering groundwater that has infiltrated into the construction site is prohibited. Discharging of contaminated soils via surface erosion is also prohibited.
- ◆ The Contractor is required to notify and obtain approval from the District and/or County ten (10) days prior to any non-stormwater discharge or dewatering associated with Contractor's construction activities.
- ◆ Construction sites shall be managed to minimize the exposure time of disturbed soil areas through phasing and scheduling of grading to the extent feasible and the use of temporary and permanent soil stabilization.
- ◆ BMPs shall be maintained at all times. In addition, BMPs shall be inspected prior to predicted storm events and following storm events.

6.21.4 SWPPP Amendments - The Contractor shall prepare amendments to the SWPPP, both graphically and in narrative form, whenever there is a change in Contractor's construction activities or operations which may result in the discharge of pollutants to surface waters, groundwaters, municipal storm drain systems or when deemed necessary by the County. The Contractor shall also amend the SWPPP if it is not effectively achieving the objectives of reducing pollutants in stormwater discharges. Amendments shall show additional BMPs or revisions to Contractor's construction activities or operations (including any construction activities in areas not included in the initially approved SWPPP) which are required on the project to effectively control water pollution.

Amendments to the SWPPP shall be submitted for review and approval by the County in the same manner specified for the initial approval of the SWPPP. The Contractor shall date and attach all approved amendments to the SWPPP. Upon approval of the amendment, the

Contractor shall implement the additional BMPs, revised construction activities or operations as described therein.

6.21.5 SWPPP Implementation - Upon approval of the SWPPP, the Contractor shall be responsible throughout the duration of the project for installing, constructing, inspecting and maintaining the BMPs included in the PPP and any amendments thereto and for removing and disposing of temporary BMPs. Unless otherwise directed by the County, or specified in these Detailed Specifications, the Contractor's responsibility for SWPPP implementation and maintenance shall continue throughout any temporary suspension of work ordered in accordance with Section 2.2, COUNTY'S RIGHT TO STOP THE WORK, of the General Conditions. Requirements for installation, construction, inspection, maintenance, removal and disposal of BMPs are specified in the Caltrans Handbooks and these Detailed Specifications. The Contractor shall implement the SWPPP in accordance with the Caltrans Handbooks and these Detailed Specifications.

The County may order the suspension of construction operations if the Contractor fails to comply with the requirements of this section, "Stormwater and Non-Stormwater Pollution Control", as determined by the County.

- a) Stormwater Pollution Control - **The Contractor shall implement soil stabilization practices and sediment control BMPs, including minimum requirements as presented in the Caltrans Handbooks, on all disturbed areas of the project site throughout the rainy season, defined as between August 1st - October 1st and November 1st - May 1st, which is consistent with Caltrans definition of rainy season for the eastern desert region.**

Implementation of soil stabilization practices and sediment control BMPs for soil-disturbed areas, including but not limited to, rough graded access roads, slopes, channel inverts, operational inlets and outlets of the project site shall be completed no later than ten (10) calendar days prior to the start of the winter season or upon start of applicable Contractor's construction activities for projects which begin either during or within ten (10) calendar days of the winter season.

Throughout the term of this contract, the total soil-disturbed area of the project site shall be less than one (1) acre. The Contractor shall demonstrate the ability and preparedness to fully deploy soil stabilization practices and sediment control BMPs to protect soil-disturbed areas of the project site by maintaining an adequate quantity of soil stabilization and sediment control materials onsite to protect exposed, soil-disturbed areas and a detailed plan for the mobilization of sufficient labor and equipment to fully deploy the required BMPs prior to the onset of precipitation and for the duration of the project.

Throughout the winter season, active soil-disturbed areas of the project site shall be fully protected at the end of each day with soil stabilization practices and sediment control BMPs. The Contractor shall monitor the weather forecast on a daily basis. The National Weather Service forecast shall be used or an alternative weather forecast proposed by the Contractor may be used if approved by the

County. If precipitation is predicted prior to the end of the following workday, construction scheduling shall be modified, as required, and the Contractor shall deploy functioning control measures prior to the onset of the precipitation.

Throughout the winter season, soil-disturbed areas of the project site shall be considered to be non-active whenever soil disturbing activities are expected to be discontinued for a period of fifteen (15) calendar days or more. Areas that will become non-active either during the winter season or within ten (10) calendar days thereof shall be fully protected with soil stabilization practices such as covering with mulch, temporary seeding, fiber rolls, blankets, etc. within ten (10) calendar days of the discontinuance of soil disturbing activities or prior to the onset of precipitation, whichever is first to occur. Areas that will become non-active either during the winter season or within ten (10) calendar days thereof shall be fully protected with sediment control BMPs within ten (10) calendar days of the discontinuance of soil disturbing activities or prior to the onset of precipitation, whichever is first to occur.

- b) **Non-Stormwater Pollution Control** - The Contractor shall implement, year-round and throughout the duration of the project, BMPs included in the SWPPP for sediment tracking, wind erosion, non-stormwater management, and waste management and disposal.
- c) **Inspections and Reporting** - The QSP shall regularly inspect the construction site for BMPs identified in the PPP to ensure the proper implementation and functioning of BMPs. The QSP shall identify corrective actions and time frames to address any deficient BMPs or reinitiate any BMPs that have been discontinued.

At a minimum, the QSP shall inspect the construction site as follows:

1. Prior to a forecast storm of 50% or greater possibility;
2. After any precipitation which causes 1/2 inch or more of runoff;
3. At 24 hour intervals during extended precipitation events; and
4. At a regular interval of once every 2 weeks.

The construction site inspection checklist provided in the Caltrans Handbooks shall be used to ensure that the necessary BMPs are being properly implemented and are functioning adequately. The Contractor shall submit one copy of each site inspection record to the County.

- d) **Maintenance** - The Contractor shall maintain construction site BMPs identified in the SWPPP to ensure the proper implementation and functioning of BMPs. If the Contractor, District or the County identifies a deficiency in the deployment or functioning of an identified BMP, the deficiency shall be corrected by the Contractor immediately, or by a later date and time if requested by the Contractor and approved by the County in writing, but not later than the onset of subsequent

precipitation events. The correction of deficiencies shall be at no additional cost to the District or the County.

- e) Training – The Contractor shall describe the types of training that the Contractor's BMP inspection, maintenance and repair personnel have received or will receive that is directly related to stormwater pollution prevention.

6.21.6 Payment - The contract lump sum price paid for contract item Stormwater and Non-Stormwater Pollution Control shall include full compensation for all direct and indirect costs incurred under this section.

Payment will be made on a basis of the percentage of work completed on the entire project.

6.21.7

IMPORTANT NOTICE:

The General Contractor and his/her subcontractors shall be responsible for implementing the Storm Water Pollution Prevention Plan (SWPPP), including the implementation and installation of all required Best Management Practices (BMPs), the maintenance and repair of all installed, damaged and/or non-functional BMPs, the periodic inspection of all BMPs and maintenance of all related inspection logs, all mandated Contractor and Subcontractor staff training and BMPs, and the maintenance of the approved SWPPP and related maintenance/monitoring documents on the Project site during the grading and construction phase of the Project . As such, the General Contractor shall provide the Riverside County Economic Development Agency (EDA) with copies of all completed SWPPP/BMP inspection documents and related forms when requested, including but not necessarily limited to the following: (1) "Visual Inspection Checklist, Good Housekeeping Inspection Checklist and Site Assessment Inspection Checklist" (2) "Notice of Non-Compliance," (3) "Trained Contractor Personnel Log: Storm Water Management Training Log," (4) "Maintenance Record" and (5) "Subcontractor Notification Letter and Notification Log." The General Contractor will be required to designate a trained employee to manage the implementation of the SWPPP. This employee shall be an employee of the General Contractor and designated as the "Water Pollution Control Manager" (WPCM) for the project. The WPCM shall: maintain water quality on and off-site as it relates to the grading and construction phases of the Project; complete the required inspections and forms; and serve as an on-site liaison between the General Contractor and the EDA relating to the SWPPP. Inspections shall follow the schedule outlined in the required "Program for Maintenance, Inspection, and Repair of Construction Site BMPs." Agency staff and/or any consultant designated by the EDA and/or staff of the local water quality control board reserves the right to conduct on-site inspections relating to the implementation of the SWPPP and the maintenance of BMPs and on-site water quality, and require that corrective action(s) be taken immediately to address any noted concerns, whether or not they are in the form of informal oral and/or written corrective measures or formal written notices of "violation" (NOV). Some written corrective measures and formal notices of violation may necessitate the testing of water quality on the construction site and/or at a designated location(s) off-site. The cost of any water quality testing and/or any required remediation due to the non-implementation and/or improper installation of BMPs, malfunctioning and/or damaged BMPs, improper on-site containment procedures, and/or on-site spill incidents, etc. shall be borne exclusively and totally by the General Contractor and his/her subcontractors.

Contractors Name

Date

Contractors Signature

Phone

6.22 Bid Item List

LARRY D. SMITH CORRECTIONAL FACILITY SLOPE ARMOR PROJECT

BASE BID

ITEM NO.	ITEM	UNIT	ESTIMATED QUANTITY	UNIT PRICE	AMOUNT
1	Mobilization	LS	1		
2	Water Control	LS	1		
3	Clearing and Miscellaneous Work	LS	1		
4	Concrete Drainage Apron	EA	1		
5	Loose Rock Riprap	CY	7,065		
6	Grouted Rock Riprap	CY	140		
7	Aggregate Base Road	SF	3,885		
8	Installation - Cottonwood Trees 24"Box	EA	5		



COUNTY OF RIVERSIDE
ECONOMIC DEVELOPMENT AGENCY

Final
INITIAL STUDY
for the
Smith Creek Slope Armor Project
Riverside County, CA
FM08270000139

Prepared By:

County of Riverside
Economic Development Agency
3403 10th Street, 5th Floor
Riverside, CA 92501

June 14, 2012

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APPENDICES

APPENDIX A	Air Quality and GHG Analysis
APPENDIX B	General Habitat Assessment and MSHCP Compliance Report
APPENDIX C	Jurisdictional Wetland Resources Report
APPENDIX D	Basis of Design Report
APPENDIX E	Geotechnical Investigation (2007 and 2011 Reports)
APPENDIX F	Cultural Resources Inventory
APPENDIX G	DEBSP Reports
APPENDIX H	Los Angeles Pocket Mouse Survey Report

INTRODUCTION

Purpose of the Environmental Assessment

In accordance with the California Environmental Quality Act (CEQA) (Public Resources Code Sections 21000 – 21177), this Initial Study has been prepared to determine potentially significant impacts upon the environment resulting from the proposed *Smith Creek Slope Armor Project*. In accordance with Section 15063 of the *State CEQA Guidelines*, this Initial Study is a preliminary analysis prepared by the County of Riverside (County) as Lead Agency, in consultation with other jurisdictional agencies, to inform the County decision makers, affected agencies, and the public of potential environmental impacts associated with the implementation of the proposed project.

Incorporation by Reference

Pertinent documents relating to this Initial Study have been cited and incorporated, in accordance with Sections 15148 and 15150 of the State CEQA Guidelines, to eliminate the need for inclusion of large planning documents within the Initial Study. Of particular relevance are those previous studies that present information regarding description of the environmental setting, future development-related growth, and cumulative impacts. The following documents are hereby identified as being incorporated by reference:

Riverside County General Plan, June 2003

Riverside County Integrated Project, General Plan Final Program Environmental Impact Report (SCH No. 20020511430), June 2003

The Pass Area Plan, County of Riverside General Plan, October 2003

Organization of the Environmental Assessment

The Initial Study is organized as follows:

Introduction: Provides the purpose for the Initial Study and applicable citations pursuant to CEQA and the *State CEQA Guidelines*

County of Riverside Environmental Assessment Form: Initial Study: Provides the project Description; existing environmental setting; the relationship of the project to the County General Plan; and an environmental impact assessment for each impact area within the environmental checklist.

Summary of Mitigation Measures: Compilation of all proposed mitigation measures.

References: List of references used for the environmental analyses

Environmental Process

The Initial Study will be subject to a 30-day public review period. During this review period, public and agency comments relative to the environmental issues should be addressed to:

John Alfred, Acting Senior Environmental Planner
County of Riverside for the
Economic Development Agency
3403 10th Street, 5th Floor
Riverside, CA 92501
951.955.0911

Comments received during that time will be considered as part of the project's environmental review and will be included for consideration by the Board of Directors (Board). If the Board determines that the project will have no significant long-term, unmitigatable environmental effects, a Mitigated Negative Declaration will be adopted for the project.

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COUNTY OF RIVERSIDE ENVIRONMENTAL ASSESSMENT FORM/ INITIAL STUDY CHECKLIST

Project Name: Smith Creek Slope Armor Project
Environmental Assessment (E.A.) Number: FM08270000139
Lead Agency Name: County of Riverside Economic Development Agency
Address: 3403 10th Street, 5th Floor, Riverside, CA. 92501
Contact Person: John Alfred, Acting, Senior Environmental Planner
Telephone Number: 951.955.0911
Applicant's Name: County of Riverside Economic Development Agency
Applicant's Address: 3403 10th Street, 5th Floor, Riverside, CA 92501

I. PROJECT INFORMATION

A. Project Description:

The Smith Creek Slope Armor Protection Project ("Project") involves the installation of embankment protective measures along the northern bank of Smith Creek adjacent to the Larry David Smith Correction Facility (LDS). The catalyst in prompting this measure was attributed to excessive rain storm events occurring in December of 2009 and 2010 that resulted in slope failure to the northern embankment abutting the correctional facility.

The property is owned by the County of Riverside and occupies portions of Assessor's Parcel Numbers (APNs) 543170005, 543170006, 543170007, 543170009, 543170010, 543170011, 543170011, 543170015, 543170018, and 543170020. The project site is generally located south of the Interstate 10, east of State Highway 234. More specifically, the Project is located adjacent to and southwest of the LDS Facility at 1627 S. Hargrave Street, in the City of Banning, California, within Smith Creek for approximately 1,900 linear feet. Some of this length contains slope protection (approximately 960 feet), constructed by the Riverside County Flood Control District in 1988. The remaining portions of the unprotected streambank adjacent to the Correctional Facility require slope protection. The existing armored portion of the embankment consists of a 2:1 sloped loose half-ton riprap section that extends ten feet below the existing channel invert (lowest portion of the channel). Visual inspection of the revetment suggests that the embankment is stable, with no signs of slope failure along this reach. Surrounding land uses include rural residential to the north, open space to the south and west and the existing LDS facility to the east. See Figure 1 for a local map of the Project location, and Figure 2 for existing conditions at the project site.

Due to the Project site being located within Smith Creek, there is a higher than normal probability of sensitive habitats being located on the project site. A General Habitat Assessment and Multi-Species Habitat Conservation Plan has been prepared to determine if suitable habitats for sensitive resources occur on the subject property.

The Project's objective is to protect the expanded correctional facility from a large rain event by means of preventing future erosion and undercutting of the slope embankment from fluvial runoff along Smith Creek and from impervious drainage flow along the top of the embankment.

The following three alternatives were considered based on feasibility, environmental impact, and the adjacent embankment historical performance:

- Loose Riprap (and/or Launching Stone), 36-inch thick, 2:1 slope of embankment
- Grouted Riprap, 30-inch thick, 2:1 slope of embankment
- Soil Cement, eight feet thick (8 feet wide x 1 foot thick lifts), 1:1 slope of embankment

To eliminate future slope failure, the Project proposes the construction of a 2:1 slope of pervious, loose riprap consisting of 3-1/2 foot (boulder size) of 1/2-ton class rock extending to a depth of approximately 10 feet below Smith Creek wash, and to extend 1,100 feet along the northern embankment of Smith Creek, adjacent to the correctional facility. Project specific site plans are provided in Figures 3a and 3b.

The Project is expected to begin construction in the summer of 2012, and is expected to be completed within approximately 180 days from commencement.

B. Type of Project: Site Specific Countywide Community Policy

C. Total Project Area: 15,681 square feet (approximately 1/3 acre)

Residential Acres: N/A	Lots: N/A	Units: N/A	Projected No. of Residents: N/A
Commercial Acres: N/A	Lots: N/A	Sq. Ft. of Bldg. Area: N/A	Est. No. of Employees: N/A
Industrial Acres: N/A	Lots: N/A	Sq. Ft. of Bldg. Area: N/A	Est. No. of Employees: N/A
Other: N/A	Lots: N/A	Sq. Ft. of Bldg. Area: N/A	Est. No. of Employees: N/A

D. Assessor's Parcel No(s): 543-170-006, 543-170-007, 543-170-009, 543-170-010, 543-170-011, 543-170-018 and 543-170-020.

E. Street References: The Project is located in unincorporated Riverside County, 0.11 mile northeast of State Highway 243 in unincorporated Banning.

F. Section, Township & Range Description or reference/attach a Legal Description: The Project site is located within Township 3 South, Range 1 East, Section 15, San Bernardino Baseline and Meridian, and is identified on the Cabazon California 7.5-minute series USGS Topographic Quadrangle map.

G. Brief description of the existing environmental setting of the project site and its surroundings: The Project site (0.43 acres) is located along a portion of Smith Creek bordering the southern perimeter of Smith Creek Correctional Facility in an unincorporated portion of Banning, California, 92220. The Project involves a sloped embankment ranging from 12 to 17 feet in vertical height (measured from the streambed to the top of the embankment) along Smith Creek. Project surroundings include Wesley Avenue (0.18 mile north), the Larry Smith Correctional Facility expansion site (immediate adjacent to northeast), Smith Creek drainage channel (southwest) and State Highway 243 (south).

II. APPLICABLE GENERAL PLAN AND ZONING REGULATIONS

A. General Plan Elements/Policies:

- 1) **Land Use:** The Project site is designated Rural Desert (RD), Rural Residential (RR), and Rural Mountainous (RM). All of the land uses allow for limited animal keeping and agricultural uses, recreational uses, governmental and utility uses and (with the exception of RR) compatible resource development including commercial extraction of mineral resources with the approval of a Surface Mining Permit (SMP). In addition, the RD land use designation allows for renewable energy uses

including solar, geothermal and wind energy uses, as well as uses required to develop and operate renewable energy sources. The following Elements and Policies apply to Project:

LU 17.1 Require that grading be designed to blend with undeveloped natural contours of the site and avoid an unvaried, unnatural, or manufactured appearance (applicable to AI 23).

LU 17.3 Ensure that development does not adversely impact the open space and rural character of the surrounding area (Applicable to AI 3).

- 2) **Circulation:** The following Policy is applicable and related to the Project:

C 1.4 - Utilize existing infrastructure and utilities to the maximum extent practicable and provide for the logical, timely, and economically efficient extension of infrastructure and services.

- 3) **Safety:** The Project site is not located within a fault zone nor is it located with ½ mile of a fault. However, the Project site is susceptible to subsidence and has moderate potential for liquefaction. The following Element and Policies apply to Project:

S 3.5 During permit review identify and encourage mitigation of onsite and offsite slope instability, debris flow, and erosion hazards on lots undergoing substantial improvements.

S 3.6 Require grading plans, environmental assessments, engineering and geologic technical reports, irrigation and landscaping plans, including ecological restoration and revegetation plans, as appropriate, in order to assure the adequate demonstration of a project's ability to mitigate the potential impacts of slope and erosion hazards and loss of native vegetation.

S 4.6 Direct flood control improvement measures toward the protection of existing and planned development (Applicable to AI 25).

- 4) **Noise:** The Project will comply with the County of Riverside Ordinance No. 847, which places time restrictions on construction activities. The project will be in compliance with the following Noise Element Policies:

N 12.1 Minimize the impacts of construction noise on adjacent uses within acceptable practices.

N 12.2 Ensure that construction activities are regulated to establish hours of operation in order to prevent and/or mitigate the generation of excessive or adverse noise impacts on surrounding areas.

N 12.4 Require that all construction equipment utilizes noise reduction features (e.g. mufflers and engine shrouds) that are no less effective than those originally installed by the manufacturer.

- 5) **Housing:** The Project does not involve the displacement of existing housing, nor does it create a need for new housing. Therefore, the Project does not conflict with General Plan Housing Element policies.

- 6) **Air Quality:** The Project will comply with all applicable regulatory requirements to control fugitive dust, which would comply with all applicable regulatory requirements to control fugitive dust during construction and grading activities. As such, the Project will be in compliance with General Plan policy AQ 4.9, which states:

AQ 1.4 Coordinate with the SCAQMD and MDAQMD to ensure that all elements of air quality plans regarding reduction of air pollutant emissions are being enforced.

AQ 4.9 Require compliance with SCAQMD Rules 403 and 403.1 and support appropriate future measures to reduce fugitive dust emanating from construction sites.

- 7) **Multipurpose Open Space:** The Project site is located within the Western Riverside Multi-Species Habitat Conservation Plan fee areas. While it is not anticipated to conflict with the Multipurpose Open Space Element, the following Policy is applicable and related to the Project:

OS 3.3 Minimize pollutant discharge into storm drainage systems and natural drainage and aquifers (Applicable to AI 3).

- B. General Plan Area Plan(s):** The Pass Area Plan
- C. Foundation Component(s):** N/A
- D. Land Use Designation(s):** Rural Residential (RR), Rural Desert (RD), and Rural Mountainous (RM)
- E. Overlay(s), if any:** None
- F. Policy Area(s), if any:** None
- G. Adjacent and Surrounding Area Plan(s), Foundation Component(s), Land Use Designation(s), and Overlay(s) and Policy Area(s), if any:** Beaumont-Banning District
- H. Adopted Specific Plan Information**
1. **Name and Number of Specific Plan, if any:** N/A
 2. **Specific Plan Planning Area, and Policies, if any:** N/A
- I. Existing Zoning:** Residential Agriculture (R-A)
- J. Proposed Zoning, if any:** N/A.
- K. Adjacent and Surrounding Zoning:** Residential Agriculture (R-A) (County) and Very Low Density Residential (Per City of Banning Zoning Map)

Figure 1: Project Location Map



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Figure 2: Project Site Photos



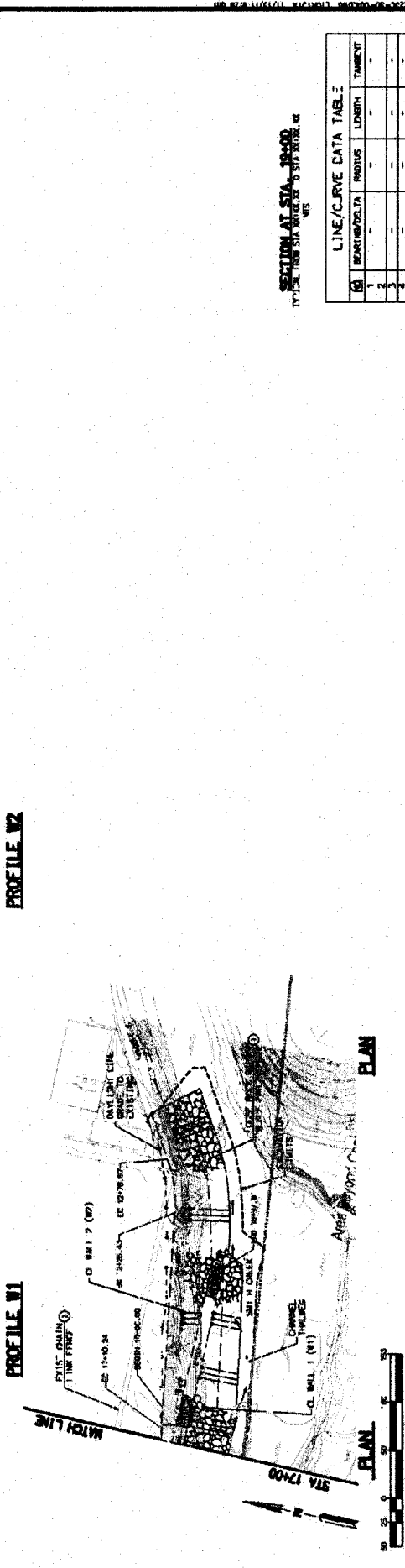
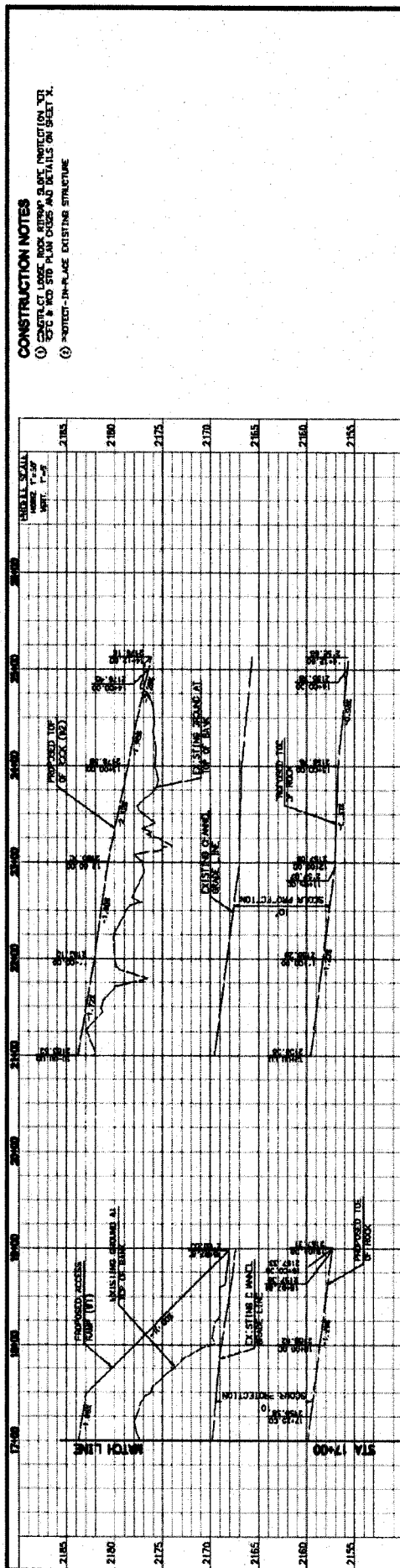
Photo 1A: Portion of Slope to be armored with existing slope armor (courtesy: Tierra Data Inc., 2012).



Photo 1B: Smith Creek streambed, with slope to be armored on right embankment

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Figure 3a: Project Site Plan



SECTION AT STA. 17+00
 TYPE: TRUSS SIX PANELS @ 6' SP. SPAN: 36'

LINE	BEARING/DELTA	RADIUS	LENGTH	TANGENT
1				
2				
3				

LINE	STA TO STA	DISE	CHD	CH	CH	CH	CH	CH	CH
LINE A									

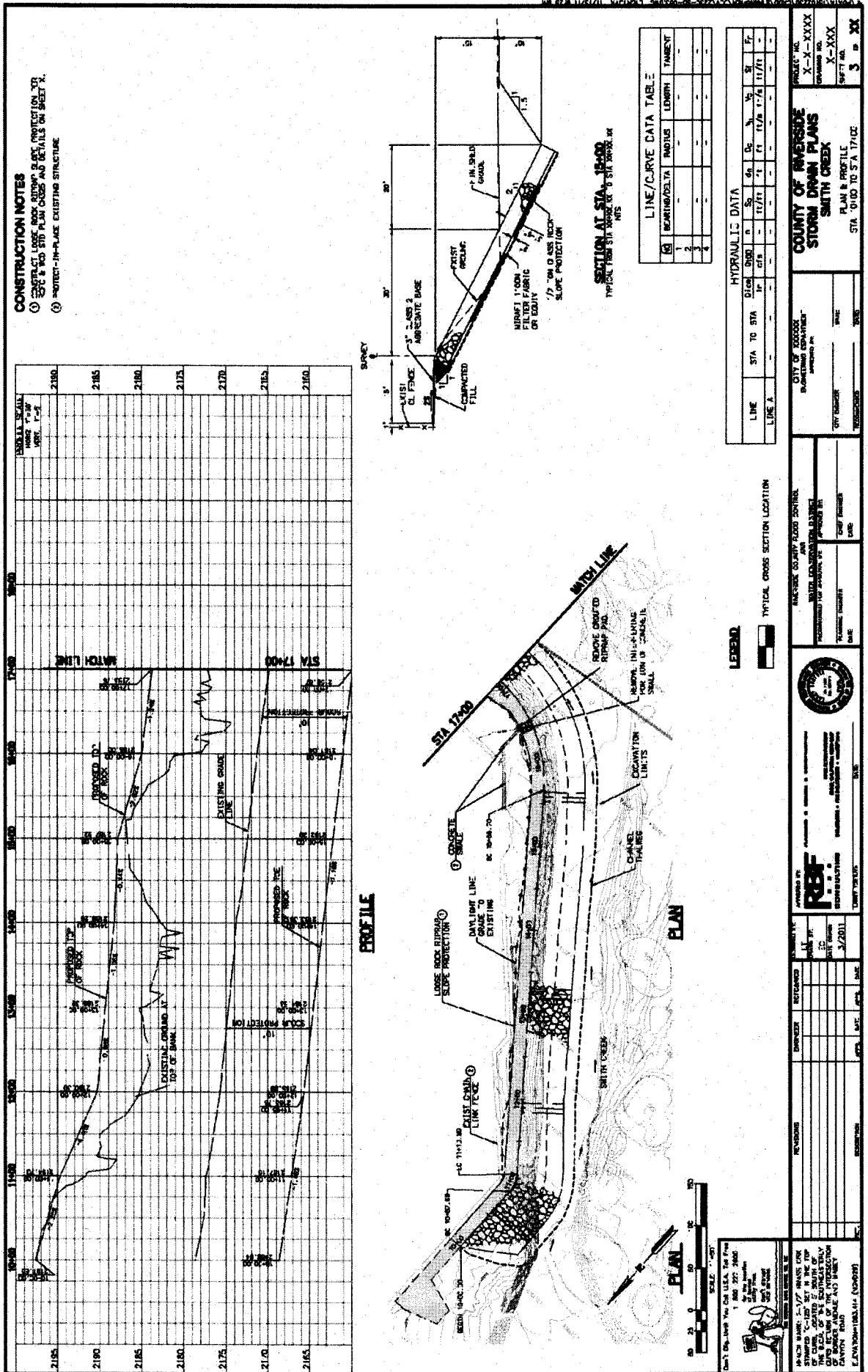
LEGEND

TYPICAL CROSS SECTION LOCATION

<p>CITY OF OKLAHOMA SANITATION DIVISION PROJECT NO. _____ CITY NUMBER _____ PROJECT NUMBER _____</p>	<p>COUNTY OF INDIAN STORM DRAIN PLANS SMITH CREEK PLAN & PROFILE STA. 17+00 TO STA. 18+75.85</p>	<p>DATE: 11/11/11 DRAWN BY: [Signature] CHECKED BY: [Signature] SCALE: 1" = 20'</p>
<p>APPROVED BY: [Signature] PROJECT MANAGER</p>	<p>APPROVED BY: [Signature] PROJECT MANAGER</p>	<p>DATE: 11/11/11 DRAWN BY: [Signature] CHECKED BY: [Signature] SCALE: 1" = 20'</p>

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Figure 3b: Project Site Plan



CONSTRUCTION NOTES

1. CONTRACTOR TO VERIFY ALL CONSTRUCTION DETAILS ON SHEET 2.
2. PROTECT IN-PLACE EXISTING STRUCTURE

SECTION AT STA. 18+00
TYPICAL FROM STA. 18+00 TO STA. 17+00

LINE/CURVE DATA TABLE

LINE	BEARING/DELTA	RADIUS	LENGTH	TANGENT
1				
2				
3				

HYDRAULIC DATA

LINE	STA TO STA	DRAIN	DOBS	n	S ₀	d ₅₀	D ₅₀	V ₂	V ₁	S ₁	S ₂	FR
LINE A												

COUNTY OF INVERSIDE
STORM DRAIN PLANS
SMITH CREEK

PLAN & PROFILE
STA. 0+00 TO STA. 17+00

PROJECT NO. X-X-XXXX
DRAWING NO. X-XXX
SHEET NO. 3 OF 21

CITY OF GARDNER
ENGINEER
CITY ENGINEER

INVERSIDE COUNTY FLOOD CONTROL DISTRICT
APPROVED FOR PROJECT BY
DISTRICT ENGINEER



APPROVED BY
DATE 3/2/2011

PROJECT NO. 08270000139

NO.	REVISIONS	DATE	BY	CHK

SCALE: 1" = 10'-0"

DATE: 3/2/2011

SMITH CREEK
STATIONED 0+00 TO 17+00
THE AREA OF THE STORM DRAIN
IS TO BE EXCAVATED AND
CONCRETE CHANNEL AND
CHANNEL THALES

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III. ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The environmental factors checked below (x) would be potentially affected by this Project, involving at least one impact that is a "Potentially Significant Impact" or "Less than Significant with Mitigation Incorporated" as indicated by the checklist on the following pages.

- | | | |
|--|--|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Agriculture & Forest Resources | <input type="checkbox"/> Hydrology / Water Quality | <input type="checkbox"/> Transportation / Traffic |
| <input checked="" type="checkbox"/> Air Quality | <input type="checkbox"/> Land Use / Planning | <input type="checkbox"/> Utilities / Service Systems |
| <input checked="" type="checkbox"/> Biological Resources | <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Other: |
| <input checked="" type="checkbox"/> Cultural Resources | <input type="checkbox"/> Noise | <input type="checkbox"/> Other: |
| <input checked="" type="checkbox"/> Geology / Soils | <input type="checkbox"/> Population / Housing | <input type="checkbox"/> Mandatory Findings of Significance |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Public Services | |

IV. DETERMINATION

On the basis of this initial evaluation:

A previous Environmental Impact Report/Negative Declaration WAS NOT prepared.

I find that although the proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the Project, as described in this document, have been made or agreed to by the Project proponent. A MITIGATED NEGATIVE DECLARATION (MND) will be prepared.



For John Alfred

June 14, 2012

John Alfred
Acting Senior Environmental Planner
County of Riverside Economic Development Agency

Date

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V. ENVIRONMENTAL ISSUES ASSESSMENT

In accordance with the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000-21178.1), this Initial Study has been prepared to analyze the proposed project to determine any potential significant impacts upon the environment that would result from construction and implementation of the project. In accordance with California Code of Regulations, Section 15063, this Initial Study is a preliminary analysis prepared by the Lead Agency, the County of Riverside, in consultation with other jurisdictional agencies, to determine whether a Negative Declaration, Mitigated Negative Declaration, or an Environmental Impact Report is required for the proposed project. The purpose of this Initial Study is to inform the decision-makers, affected agencies, and the public of potential environmental impacts associated with the implementation of the proposed project.

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
AESTHETICS				
Would the project				
1. Scenic Resources				
a) Have a substantial effect upon a scenic highway corridor within which it is located?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings and unique or landmark features; obstruct any prominent scenic vista or view open to the public; or result in the creation of an aesthetically offensive site open to public view?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Source: Riverside County General Plan (CORGP) Figure C-7 "Scenic Highways"

Findings of Fact:

a-b) The Project area is located approximately (0.12 miles) to a state designated scenic highway (State Highway 243); however, the Project will not have a substantial effect on this scenic corridor as the Project, is located down slope from Highway 243 and across Smith Creek. Secondly, the Project will not damage or obstruct existing scenic resources (i.e. mountain back drop scenery, trees, and boulders). The Project site consists of approximately 0.43 acres, and involves the construction of a 2:1 slope of loose riprap consisting of 3-1/2 foot (boulder size) of 1/2-ton class rock extending to a depth of approximately 10 feet below Smith Creek wash, and to extend 1,100 feet along the northern embankment of Smith Creek adjacent to the correctional facility. Therefore the Project's impact in this regard is considered less than significant.

Mitigation: None

Monitoring: None

2. Mt. Palomar Observatory				
a) Interfere with the nighttime use of the Mt. Palomar Observatory, as protected through Riverside County Ordinance No. 655?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Source: RCLIS (GIS Database), Ord. No. 655 (Regulating Light Pollution), Project Application Materials, On-Site Inspection

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
--------------------------------	--	------------------------------	-----------

Findings of Fact:

The Project will not create or install additional permanent lighting. The Project site is located within the 45-mile (Zone B) Special Lighting Area that surrounds Mt. Palomar Observatory. Ordinance No. 655 contains approved materials and methods of installation, definition, general requirements, requirements for lamp source and shielding, prohibitions, and exceptions. The Proposed Project would adhere to the lighting requirements of Riverside County Ordinance No. 655. Therefore, impacts from nighttime lighting would be less than significant.

Mitigation: None

Monitoring: None

3. Other Lighting Issues

a) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Expose residential property to unacceptable light levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Source: On-site Inspection, Project Application Description

Findings of Fact:

a-b) The Project will not create, install, or expose residential property to additional permanent lighting as the project involves the construction of a 2:1 slope of loose riprap consisting of 3-1/2 foot (boulder size) of 1/2-ton class rock and extending 1,100 feet along the northern embankment of Smith Creek adjacent to the correctional facility. Therefore, there will be no impact.

Mitigation: None

Monitoring: None

AGRICULTURE & FOREST RESOURCES

Would the project

4. Agriculture

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland) as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Conflict with existing agricultural zoning, agricultural use or with land subject to a Williamson Act contract or land within a Riverside County Agricultural Preserve?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Cause development of non-agricultural uses within 300 feet of agriculturally zoned property (Ordinance No. 625 "Right-to-Farm")?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Source: RCIP, Riverside County General Plan Figure OS-2 "Agricultural Resources," RCLIS (GIS Database) Project Application Materials

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
--------------------------------	--	------------------------------	-----------

Findings of Fact:

- a) According to the Riverside County Land Information System, the Project site is located within Farmland of Local Importance. However, the Project will not result in the conversion of Prime, or Unique Farmland, or Farmland of Statewide Importance. The Project area is located within Smith Creek wash, which is minimal in size and irregularly shaped (0.43 acre) and adjacent to the recently, completed project expansion to the Larry David Smith Correction Facility (See Figures 2a and 2b, and Photos: 1A and 1B). Therefore, impacts in this regard are considered less than significant.
- b) The Project would not conflict with agricultural zoning, agricultural use, Williamson Act, or a Riverside County Agricultural Preserve (RCAP). Although the Project site is currently zoned as Residential Agriculture (R-A), the Project area is located within Smith Creek wash, which is minimal in size and irregularly shaped (0.43 acre) and thus prevents utilization of permitted agricultural uses as listed in the R-A zone. Therefore, impacts in this regard are considered less than significant.
- c) Although the Project is located within 300 feet of an agriculturally zoned property (R-A) (Per Ordinance No. 625), the Project area is located within Smith Creek wash, which is minimal in size and irregularly shaped and thus prevents utilization of permitted agricultural uses listed in the R-A zone. Therefore, impacts in this regard are considered less than significant.
- d) The Project site is not located in an area where agricultural uses are currently utilized. The Project area is located within Smith Creek wash, which is minimal in size and irregularly shaped and thus prevents utilization of permitted agricultural uses. Therefore, the Project will not affect or cause the conversion of Farmland to a non-agricultural use. Therefore, there would be no impact.

Mitigation: None

Monitoring: None

5. Forest

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Govt. Code section 51104(g))? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Result in the loss of forest land or conversion of forest land to non-forest use? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of forest land to non-forest use? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Source: Riverside County General Plan Figure OS-3 "Parks, Forests and Recreation Areas," and Project Application Materials.

Findings of Fact:

- a) The Project site is not adjacent to or within an area that would conflict with existing zoning for, or cause rezoning of, forest land. The Project involves construction of a 2:1 slope of loose riprap extending 1,100

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
--------------------------------	--	------------------------------	-----------

feet along the northern embankment of Smith Creek adjacent to the correctional facility. Therefore, there would be no impact.

b-c) The Project would not result in the loss of forest land or involve changes to the existing environment resulting in conversion of forest land to non-forest uses. The Project site, which involves the existing embankment of Smith Creek abutting the correctional facility, is mainly barren and devoid of forested vegetation. Therefore, there would be no impact.

Mitigation: None

Monitoring: None

AIR QUALITY

Would the project

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
6. Air Quality Impacts				
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Expose sensitive receptors which are located within 1 mile of the project site to project substantial point source emissions?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Involve the construction of a sensitive receptor located within one mile of an existing substantial point source emitter?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Source:

SCAQMD CEQA Air Quality Handbook Table 6-2, CalEEMod 2011.1.1, Appendix A

Findings of Fact:

a) The Project site is located within the South Coast Air Basin (SCAB) and is within the jurisdiction of the South Coast Air Quality Management District (SCAQMD). The final 2007 Air Quality Management Plan (AQMP) was adopted by the SCAQMD Governing Board on June 1, 2007 and provides updates to federal standards regarding carbon monoxide (CO), nitrogen dioxide (NO2), and standards for ozone and particulate matter less than or equal to 10 microns in diameter (PM10). The SCAB is a federal and state non-attainment area for ozone, PM10, and PM2.5. An area is considered to be in non-attainment status when air pollution persistently exceeds the national ambient air standards.

The 2007 SCAB's AQMP sets forth a comprehensive program that is aimed to lead SCAB into compliance through all federal and state air quality standards. The boundaries of the SCAB extend from the Pacific Ocean on the west to the San Gabriel, San Bernardino, and San Jacinto Mountains to the north and east.

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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SCAB also includes portions of Los Angeles County, all of Orange County, and the non-desert areas of Riverside and San Bernardino counties. The Project site lies in the South Coast Air Basin (SCAB), a region under jurisdiction of the South Coast Air Quality Management District (SCAQMD). The Project would not conflict with, or obstruct implementation of the Basin's Air Quality Management Plan. As discussed below in 6 b-c, construction emissions associated with the Project would be less than significant.

- b) Short-term impacts will occur during Project grading and construction activities. The SCAQMD has established standard policies concerning the control of fugitive dust emissions, which are applicable to ground-disturbing activities for all projects. Rule 402 requires the implementation of dust control techniques to prevent fugitive dust from creating a nuisance off-site, while Rule 403 is designed to reduce the amount of fugitive dust entrained as a result of human activity. **Therefore, all projects must comply with the provisions of Rules 401, 403.** These Rules are contained herein under Appendix A.

The Project involves the grading and construction of slope armor protection for Smith Creek drainage and is expected to be completed within approximately 180 days from commencement. Air quality impacts from the Project would be described as short-term in perspective in relation to grading and project construction. The short-term construction emissions of criteria pollutants from this Project were modeled using California Emissions Estimator Model (CalEEMod Version 2011.1.1) (As shown below in Table-1 below). The emissions resulting from Project construction in compliance with SCAQMD Rules 401 and 403 (factored in CalEEMod modeling) would not exceed the SCAQMD's regional significance thresholds for construction activities. Nonetheless, the Project site is located adjacent to Smith Correctional Facility, and as discussed above, will be required to abide by Rules 401 and 403 and therefore, Project emissions would be considered less than significant.

Potentially Significant Impact Less than Significant with Mitigation Incorporated Less Than Significant Impact No Impact

Table AQ-1 Summary of Emissions

	NO _x	CO	PM ₁₀	PM _{2.5}	SO ₂	Other
Site Preparation						
Fugitive Dust	0.00	0.00	0.00	0.00	0.02	0.02
Off-Road Diesel	1.85	13.45	8.72	0.01	0.89	0.89
On-Road Diesel	0.00	0.00	0.02	0.00	0.02	0.00
Worker Trips	0.02	0.02	0.28	0.00	0.05	0.00
Total	1.87	13.47	9.02	0.01	0.98	0.91
SCAQMD Significance Threshold	75	100	550	150	150	150
Significant?	NO	NO	NO	NO	NO	NO
Site Grading						
Fugitive Dust	0.00	0.00	0.00	0.00	2.38	1.30
Off-Road Diesel	4.18	33.58	19.35	0.03	1.74	1.74
On-Road Diesel	0.10	0.98	0.62	0.00	1.32	0.04
Worker Trips	0.02	0.02	0.28	0.00	0.05	0.00
Total	4.30	34.58	20.25	0.03	5.49	3.08
SCAQMD Significance Threshold	75	100	550	150	150	150
Significant?	NO	NO	NO	NO	NO	NO
Site Construction						
Fugitive Dust	0.00	0.00	0.00	0.00	0.00	0.00
Off-Road Diesel	9.89	48.09	32.97	0.06	3.38	3.38
On-Road Diesel	0.08	0.85	0.46	0.00	3.25	0.04
Worker Trips	0.03	0.03	0.39	0.00	0.07	0.00
Total	10.00	48.97	33.82	0.06	6.70	3.42
SCAQMD Significance Threshold	75	100	550	150	150	150
Significant?	NO	NO	NO	NO	NO	NO
Source: SCAQMD CEQA Air Quality Handbook Table 6-2, CalEEMod, Appendix A						

- c) The Project involves site preparation, grading and construction of slope armor protection for Smith Creek drainage. Motorized equipment will consist of one grader, one backhoe and one dump truck and is estimated that the overall duration of the project will take a maximum duration of approximately 180-days to complete. Since the project would not involve continued annual maintenance of the slope armored embankment, ongoing operational emissions are therefore considered as non-existent. Therefore, there would be no impact.
- d) The nearest sensitive receptors to the Project are residences located approximately (0.15 mile) north of the project site. Localized impacts resulting from short-term project construction were calculated based on the SCAQMD's Localized Significance Threshold (LST) Methodology. Since construction activities (site construction and staging area combined) will occur over an area of approximately 1 acre per day, the Mass Rate Lookup Table was utilized for a 1 acre site. Table 2 below summarizes the results of the LST analysis for short term site grading.

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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Table AQ-2 Localized Significance Threshold Summary – Site Grading

Peak Construction Emissions	8.72	13.45	0.89	0.89
LST Threshold	602	118	4	3
Significant Impact?	NO	NO	NO	NO

As shown above, the Project will not expose sensitive receptors within one mile of the Project site to substantial point source emissions. Nonetheless, the Project site is located adjacent to Smith Correctional Facility, which will be required to abide by AQMD Rules 401 and 403 in order to reduce Project emissions with regard to sensitive receptors. Therefore, the impact would be less than significant.

- e) The Project involves grading and construction of slope armor protection for Smith Creek drainage. The Project does not involve the construction of a sensitive receptor located within one mile of an existing substantial point source emitter. Therefore, there will be no impact in this regard.
- f) The Project presents the potential for generation of objectionable odors in the form of diesel exhaust from motorized equipment during grading and construction activities (i.e., backhoe, grader, dump truck). However, the LST analysis above demonstrates that significant emissions will not be produced at a local level during construction and that the Project will not expose substantial numbers of people to objectionable odors. Therefore, the impact would be less than significant.

Mitigation: None

Monitoring: None

BIOLOGICAL RESOURCES

Would the project

7. Wildlife & Vegetation

a) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Conservation Community Plan, or other approved local, regional, or state conservation plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Have a substantial adverse effect, either directly or through habitat modifications, on any endangered, or threatened species, as listed in Title 14 of the California Code of Regulations (Sections 670.2 or 670.5) or in Title 50, Code of Federal Regulations (Sections 17.11 or 17.12)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U. S. Wildlife Service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Department of Fish and Game or U. S. Fish and Wildlife Service?				
f) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Source: General Habitat Assessment and MSHCP Compliance Report; Jurisdictional Wetland Resources Report; Los Angeles Pocket Mouse Survey Report; RCLIS GIS database; WRC-MSHCP and/or CV-MSHCP, On-site Inspection, DBESP

Findings of Fact:

The following technical reports were prepared for the project:

- 1) General Habitat Assessment & MSHCP Compliance Report (HA) (Appendix B)
- 2) Los Angeles Pocket Mouse Focused Survey (LAPM Report) (Appendix H)
- 3) Jurisdictional Wetland Resources Report (JD) (Appendix C)
- 4) Determination of Biologically Equivalent or Superior Preservation for Impacts to Riverine/Riparian Habitat (DBESP) (Appendix G)

The facts contained herein were derived from these project-specific technical reports, and the other resources listed above under "Sources."

a-c) The project is within the north bank of Smith Creek. Smith Creek is in the Whitewater River watershed, draining into the San Gorgonio River, then the Whitewater River. In rare flood years it drains into an inland sea known as the Salton Sea. Annual precipitation patterns vary greatly from year-to-year in the region, from as little as 7.2 inches (in 1972) to as high as 39.4 inches (in 1993) (Data Source: Western Regional Climate Center, <http://www.wrcc.dri.edu/>). The long-term average annual rainfall at Beaumont is 17.8 inches. Most of the rain falls from November through April. Onsite soils are shown in the Table BIO-1.

Table BIO-1: Onsite Soils

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
CkF2	Cineba rocky sandy loam, 15 to 50 percent slopes, eroded	6.0	21.3%
FyF2	Friant rocky fine sandy loam, 25 to 50 percent slopes, eroded	2.2	7.9%
GkD	Gorgonio loamy sand, channeled, 2 to 15 percent slopes	6.9	24.8%
GyC2	Greenfield sandy loam, 2 to 8 percent slopes, eroded	1.2	4.3
HcD2	Hansford coarse sandy loam, 8 to 15 percent slopes, eroded	6.0	21.4%
RsC	Riverwash	5.7	20.2%

Source: General Habitat Assessment & MSHCP Compliance Report, Kidd, April 3, 2012.

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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Elevation ranges from 1,545 to 1,549 feet above sea level. Adjacent lands to the north and east support commercial and residential zones, lands to the west support agricultural lands, and lands to the south support open-space before a steep ascent into the San Jacinto Mountains. The elevation south of the site increases from 2200 feet to 3800 feet above sea level in 1.3 miles. The San Jacinto Mountains support nesting habitat for numerous raptor species including the prairie falcons (*Falco mexicanus*) and golden eagles (*Aquila chrysaetos*).

The drainage feature contains a sandy, braided channel, and steep cut banks. According to the JD, the channel of Smith Creek was found to be predominantly unvegetated (less than five percent canopy cover overall) with a steep, vegetated bank (the slope to be armored) above the OHWM. Within the channel there were occasional sandbar willow thickets, with occasional emergent cottonwoods (*Populus fremontii*) occurring associated with the sandbar willow thickets or isolated from them. One wetland and three upland plant communities were encountered. These are identified in Table 4-1 of the JD by the vegetation system used for the State of California VegCAMP system (Sawyer et al. 2009), by the Holland (1986) system as applied in Riverside County habitat management documents, and according to the USFWS National Wetland Inventory classification system (Cowardin et al. 1979). The Cowardin classification system is a hierarchical system based on plants (hydrophytes), soils (hydric soils), and frequency of flooding. According to the DBESP, the general project area is highly disturbed by repeated erosion and slope failure due to Smith Creek and is generally vegetated by dense non-native annual grass species such as ripgut brome (*Bromus diandrus*), red brome (*Bromus rubens*), Mediterranean schismus (*Schismus sp.*) and fescue (*Vulpia sp.*) and ruderal vegetation, including, slender wild oat (*Avena barbata*), black mustard (*Brassica nigra*), dove weed (*Eremocarpus setigerus*), telegraph weed (*Heterotheca grandiflora*), giant Asian reed (*Aurundo donax*) and Russian thistle (*Salsola tragus*). Within the upland vegetation are several areas of sage scrub vegetation including buckwheat (*Eriogonum fasciculatum*) and white sage (*Salvia apiana*). There are also considerable patches on the slopes and the stream bed itself which are unvegetated. The only species considered to be riparian within the project impact area is a single mature cottonwood (*Populus fremontii*) and two areas of mulefat (*Baccharis glutinosa*) and sandbar willow (*Salix exigua*) scrub which occur within the streambed. The Project is located within an area subject to the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). The purpose of the MSHCP is to conserve habitat for selected species throughout western Riverside County. The MSHCP consists of several Criteria Areas and Cells that assist in facilitating the process by which individual properties are evaluated for inclusion and subsequent conservation in the MSHCP. In addition to Criteria Cell requirements, the MSHCP requires consistency with Sections 6.1.2 (Protection of Species within Riparian/Riverine Areas and Vernal Pools), 6.1.3 (Protection of Narrow Endemic Plant Species), 6.1.4 (Urban Wildlands Interface), 6.3.2 (Additional Survey Needs and Procedures), Appendix C (Standard Best Management Practices), and 7.5.3 (Construction Guidelines). The MSHCP serves as a comprehensive, multi-jurisdictional Habitat Conservation Plan (HCP), pursuant to Section (a)(1)(B) of the Endangered Species Act (ESA), as well as the Natural Communities Conservation Plan (NCCP) under the State NCCP Act of 2001.

The California State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Board (RWQCB), administer the National Pollutant Discharge Elimination System (NPDES) permit program. The NPDES permits cover all construction and subsequent drainage improvements that disturb

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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one acre or more, industrial activities, and municipal separate storm drain systems. Construction and industrial activities are typically regulated under statewide general permits that are issued by the SWRCB. The RWQCB also issued a statewide general small Municipal Separate Storm Sewer System (MS4) stormwater NPDES permit for public agencies that fall under that Phase II NPDES regulations. Although the Project is under one acre in size (0.43 acre), the Project will be required to comply with all provisions of the NPDES permit program through preparation of a Storm Water Pollution Prevention Plan (SWPPP), which will identify and activate appropriate BMPs to be set in place in order to contain sediment discharges and erosion during rain storm events. Thus, potential impacts to receiving waters from the Project would be reduced through compliance with NPDES regulations and incorporation of BMPs specific to the Project. The Project is therefore consistent with the MSHCP Section 7.5.3 through compliance with NPDES regulations and incorporation of BMPs.

The Project site is not located within any MSHCP Criteria Cells or Special Linkage Areas and does not require a Habitat Assessment and Negotiation Strategy (HANS) report to be performed. However, the Project does lie within a survey area for the Western Burrowing owl (*Athene cunicularia*), Los Angeles pocket mouse (*Perognathus longimembris brevinasus*) (LAPM), the Yucaipa onion (*Allium haematociton*), and the many-stemmed dudleya (*Dudleya multicaulis*).

Results from the HA (Appendix B) concluded that the Los Angeles pocket mouse (LAPM), and to a much lesser extent, the burrowing owl, have a potential to occur within the Project limits or within the immediate vicinity of the Project site (Jimerson-Kidd, 2012).

Burrowing Owl: The Banning area does not support dense colonies of burrowing owls such as those found to the southwest in the Hemet area and to the east in the area around Desert Hot Springs. This specific area is also considered sub-optimal for the burrowing owl because of the adjacent ridges and numerous trees which provide perch sites for avian predators of the burrowing owl. However, the rock piles on site could support burrowing owls, although no sign was observed. There were squirrel/rabbit burrows observed on the south side of Smith creek. No feathers, pellets, tracks or other sign of burrowing owls was found during the site assessment or during other previous visits to the site. Therefore, burrowing owls are not likely present. However, mitigation proposed herein would lessen any impact to burrowing owl to less than significant.

Los Angeles Pocket Mouse: The LAPM (terrestrial mammal species of special concern) was considered in the HA as most probable to occur on, or near to the Project due to documented occurrences within close proximity. As a result of this finding, a trapping survey was performed by County of Riverside Environmental Programs Division (EPD) on May 14, 2012 to determine presence/absence. The focused survey concluded positive for presence of LAPM and with suitable habitat estimated at 0.47 acres. EPD is currently in the process of discussion with wildlife agencies and the Regional Conservation Authority (RCA) regarding impacts to the LAPM and the 0.47 acres of potential LAPM habitat that would be impacted by Project. The DBESP recommended mitigation for the LAPM as shown below. With the mitigation proposed herein, the impact to LAPM would be less than significant.

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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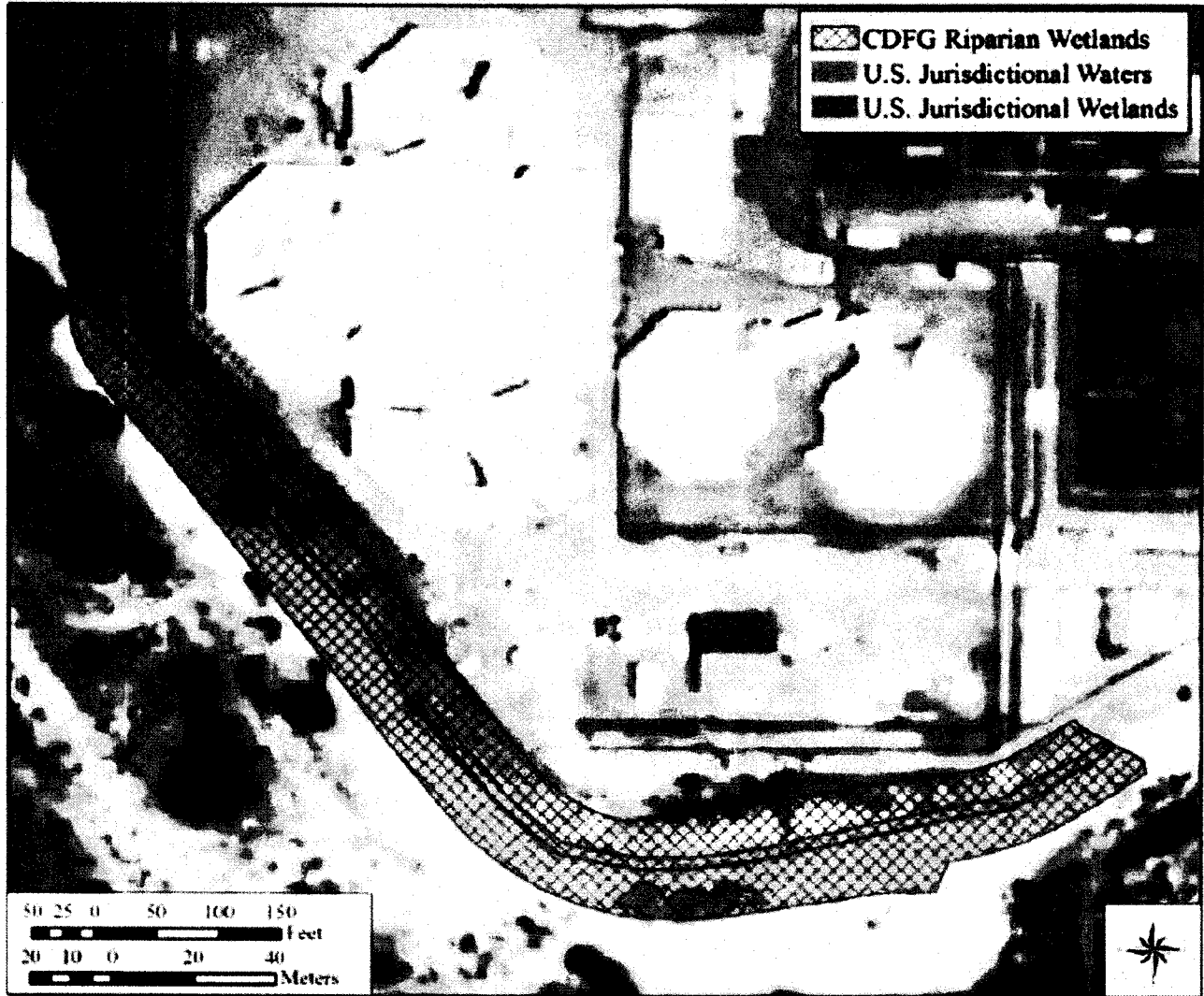
Plant Communities: Both the HA and the JD utilized the California Department of Fish and Game (CDFG) Vegetation Classification and Mapping Program system (VegCAMP) in identifying the Project site in overlapping three natural plant communities: Riparian Riverine, Riverside Alluvial Fan Sage Scrub (RAFSS) and Non-Native Grasslands. The HA determined that the impacts to plant communities would be less than significant with the mitigation (proposed herein).

Since most of the vegetation impacted by this project is non-native annual grasses or ruderal weed species impacts to CDFG resources under Section 1600 of CDFG Code are considered minor. In addition to any required revegetation per the 1600 agreement, the project will prepare a Habitat Monitoring and Management Plan (HMMP) for this easement area which shall address removal of invasive non-native species within this area of Smith Creek for five years. Annual reports documenting the progress of removal of non-native species shall be prepared for all five years.

- d) The Project site will not interfere substantially with the movement of native migratory fish or with wildlife species. Although the construction of slope revetment will reduce the width of Smith Creek was to an average of 12 wide for a length of 1,100 feet, passage though this portion of the wash will remain unobstructed for movement of non-migratory species. Mitigation measures proposed herein would reduce the impact to less than significant.
- e-f) The Project site does not support vernal pools, depressions, suitable soils, or any other habitats suitable for various fairy shrimp species. Some of the cottonwoods occur on the upper banks (outside of the direct impact area) and high floodplain with an upland understory, and are not considered a federal jurisdictional wetland due both occurring above the OHWM in the flood channel and due to the nonwetland species dominance of the understory. However, these areas benefit from deep groundwater from Smith Creek and fall under CDFG jurisdiction as riparian habitat. The RWQCB jurisdictional boundary is the same as the USACE. CDFG and MSHCP jurisdiction associated with the Smith Creek drainage extends to the top of each bank. Figure 4 shows the jurisdictional areas. Figure 5 shows the riparian areas.

Figure 4: Wetland Delineation

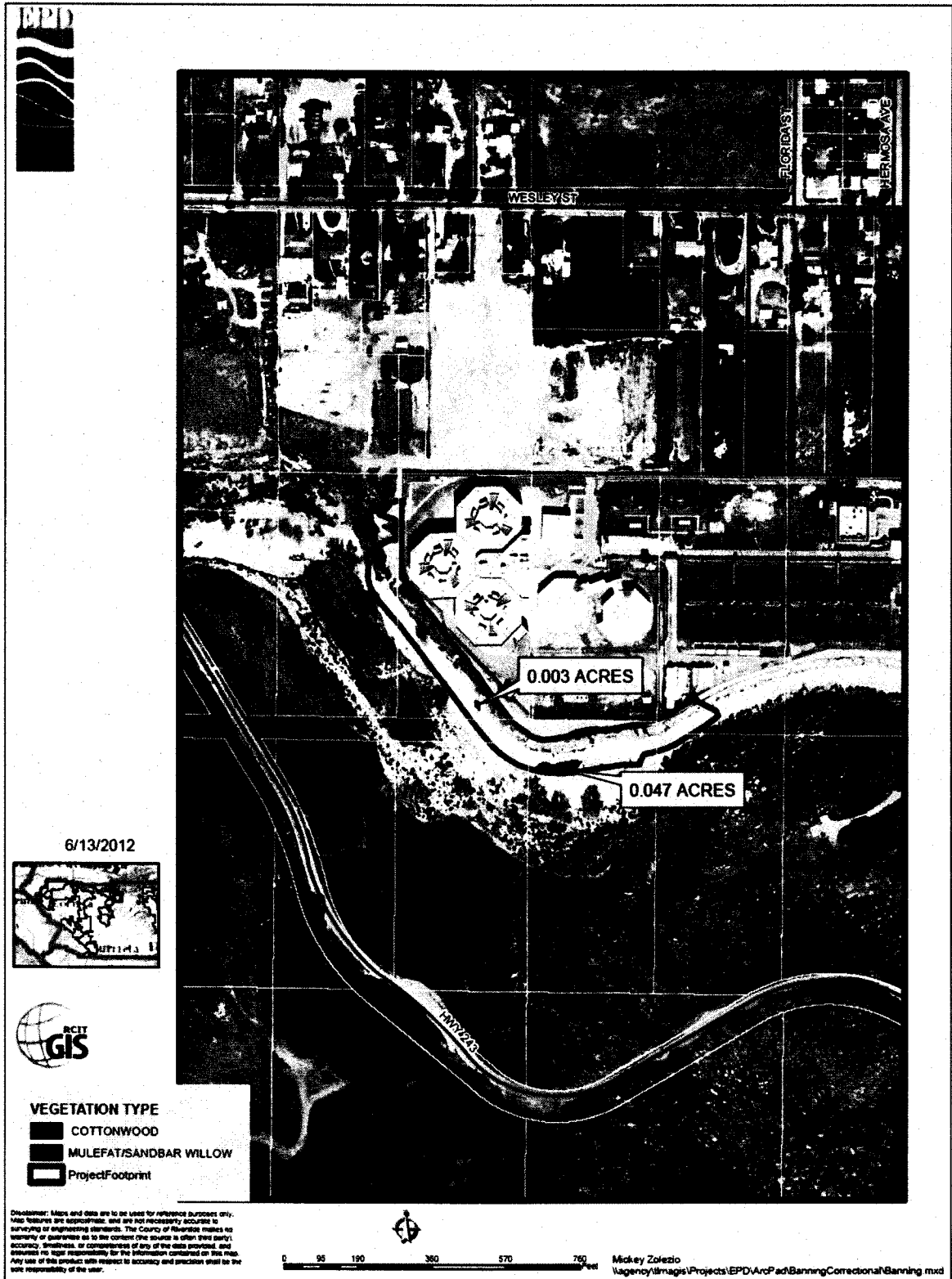
Wetland Delineation



Source: Jurisdictional Wetland Resources Report, Tierra Data, April 16, 2012

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Figure 5: Riparian Areas



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Potentially Significant Impact Less than Significant with Mitigation Incorporated Less Than Significant Impact No Impact

All drainage courses which possess bed and bank features and have downstream connectivity to Waters of the US are ACOE and CDFG jurisdictional and also meet the definition of Riverine/Riparian habitat since there is evidence of flow. The total area of USACE jurisdictional wetlands in the project footprint is 0.13 acres. Other USACE non-wetland waters of the U.S. total 1.02 acres. CDFG jurisdictional waters are 2.10 acres. RWQCB jurisdictional area is 1.15. MSHCP area is 2.10. These jurisdictional area estimates are shown below in Table BIO-2.

Table BIO-2: Summary of Jurisdictional Area and Lengths

Feature	Length (meters)	Area on Site (ac)
USACE Jurisdictional Wetlands	71 m (232 ft)	0.13
USACE Non-wetland Waters of the U.S.	314 m (1031 ft)	1.02
CDFG Jurisdiction	314 m (1031 ft)	2.10
RWQCB (sum of USACE categories)	314 m (1031 ft)	1.15
MSHCP	314 m (1031 ft)	2.10

Source: Jurisdictional Wetland Resources Report, Tierra Data, April 16, 2012

The proposed project will impact approximately 1,100 linear feet of the northern bank of Smith Creek, however, the riverine function of the drainage shall remain largely the same. Table Bio-3 shows the size of impacted areas.

Table BIO-3: Impacted Jurisdictional Areas and Lengths

Impact Description	BACE		California		Temporary Impact Buffer (see Map 2)
	Wetland Waters	Wetlands	CDFG	RWQCB	
Temporary Area	0.86 ac	0.07 ac	0.93	0.93 ac	
Permanent Area	0.24 ac	0.01 ac	1.44 ac	0.25 ac	
Total Acreage (permanent plus temporary impacts)	1.10 ac	0.08 ac	2.38 ac	1.18 ac	1.9 ac

Source: Jurisdictional Wetland Resources Report, Tierra Data, April 16, 2012

The only riparian resources which would be impacted by this project would be a single mature cottonwood tree and 0.05 acres of mulefat/willow scrub as shown on Figure 5. Construction of this project will remove a large quantity of giant Asian reed which is beneficial to the native vegetation along Smith Creek. The maximum acreage of jurisdictional resources which would be impacted by the proposed project are shown in Table Bio-3 above. Mitigation has been proposed herein that would lessen the impacts to less than significant.

The proposed project would result in impacts to waters of the U.S., waters of the State, and riverine/riparian areas; therefore, USACE, RWQCB, and CDFG permit authorization, and compliance with the MSHCP would be required prior to construction. With the mitigation proposed herein, the impact to wetlands and jurisdictional waters would be less than significant.

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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- g) With mitigation will not conflict with any local policies or ordinances protecting biological resources the impacts would be less than significant. Refer to the previous biological resources responses for more in this regard.

Mitigation:

MM BIO 1: Nesting Season Construction Limitations. All native breeding birds, (except game birds) regardless of their listing status, are protected under the Migratory Bird Treaty Act (MBTA). Potential impacts to the breeding birds are considered significant under the California Environmental Quality Act (CEQA). Since nesting birds may occur on site it is important that the Project comply with the MBTA and the California Dept. of Fish and Game (CDFG) Code Regulations 3500 and 3800 which protect nesting birds. In order to comply with these regulations all future clearing, grubbing, tree trimming and tree removals must be conducted outside the bird nesting season. The typical nesting season is often considered February 15th to August 31st.

MM BIO 2: Preconstruction Burrowing Owl Survey: Prior to construction, a 30-day pre-construction burrowing survey shall be conducted to ensure that no burrowing owls are within the grading limits or within 300 feet of construction. If burrowing owls are found within the zone of influence of the project footprint, passive relocation or other acceptable measure may be required.

MM BIO 3: Drainages. If disturbance to Smith Creek is expected during future development, permits and consultation with the state and federal agencies will be required.

MM BIO 4: Night Lighting. No work shall be conducted at night to avoid night lighting entering Smith Creek.

MM BIO 5: Invasive Plants. All equipment shall be power washed with a high pressure air hose prior to entering the Project site to ensure no seeds from invasive plants are brought into the Project site.

MM BIO 6: Run-off. Silt-fencing shall be installed along the grading limit to avoid any loose soil, rocks, or mud from entering riparian areas on and adjacent to the site.

MM BIO 7: Restrictive Covenant Area. A restrictive covenant shall be established over 4.7 acres within Smith Creek and along the southern bank and upland area shall be created as part of a DBESP to address impacts to the Los Angeles pocket mouse and mitigation for the project's Riverine/Riparian impacts shall occur within this area.

MM BIO 8: Fremont Cottonwood Trees. The project shall plant five Fremont cottonwood trees to replace the one that will be removed by the slope armoring (5:1 mitigation ratio).

MM BIO 9: Mulefat/Willow Scrub. The project shall create 0.25 acres of mulefat/willow scrub within the restrictive covenant area to mitigate for the impacts to the 0.05 acres of mulefat/willow scrub.

MM BIO 10: Compensatory Land. The project shall secure and replace the riparian vegetation at a 1.4:1 ratio for all impacts to jurisdictional areas.

MM BIO 11: Habitat Monitoring and Management Plan. In addition to any required revegetation per the 1600 agreement, the project will prepare a Habitat Monitoring and Management Plan (HMMP) for the restrictive covenant area which shall address removal of invasive non-native species within this area of Smith Creek. Annual reports documenting the progress of removal of non-native species shall be prepared for a

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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minimum of five years. Annual reports shall be prepared until the results indicate that the habitat is stable and is providing the desired benefits.

Monitoring: Riverside County EDA, Project Construction Manager.

CULTURAL RESOURCES

Would the project

8. Historic Resources

a) Alter or destroy an historic site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of a historical resource as defined in California Code of Regulations, Section 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Source: Cultural Resources Inventory, Chambers Group Inc., 2007; County of Riverside Environmental Assessment for the Larry D. Smith Correctional Facility Phase III Expansion; County of Riverside General Plan, Figure OS-7: Historical Resource Inventory, On-site Inspection.

Findings of Fact:

- a) As indicated in the Cultural Resources Inventory (Chambers, 2007) a record search was conducted for the Phase III expansion to the Larry D. Smith Correctional Facility (Appendix F). Since the Phase III boundary includes the Project Site, the report is also considered supportive and binding to the Project site. The results from the search concluded that the Phase III expansion area did not contain historical sites. Therefore, no impact would occur.
- b) The Project will not cause a substantial adverse change in the significance of a historical resource. As indicated in the Cultural Resources Inventory (Chambers, 2007), two historic hard-rock mine sites are located south of the project site within a 0.5 -mile radius and nine historic-era homes were identified north of the Project site within a 0.5-mile radius. Nonetheless, the Project site, as a portion of the Smith Correctional Phase III southern boundary (APN: 543-170-006, 543-170-007, 543-170-009, 543-170-010, 543-170-011, 543-170-018 and 543-170-020) would not impact these sites. Therefore, there would be no impact.

Mitigation: None

Monitoring: None

9. Archaeological Resources

a) Alter or destroy an archaeological site.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to California Code of Regulations, Section 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Restrict existing religious or sacred uses within the potential impact area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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Source: RCLIS GIS Database; Cultural Resources Inventory, Chambers Group Inc., 2007; County of Riverside Environmental Assessment for the Larry D. Smith Correctional Facility Phase III Expansion, On-site Inspection.

Findings of Fact:

- a-b) As indicated in the Cultural Resources Inventory (Appendix F) a record search was conducted at the Eastern Information Center. No prehistoric sites were recorded within the Phase III boundary at the time or research. Furthermore, site observations revealed no indicators of prehistoric activity prior to construction of the Phase III expansion area (LDS Phase III ISMND, 2007). A previous site observation for the expansion of the facility east of the Phase III also did not find surface artifacts in the Project vicinity. Although this report indicated three prehistoric sites within 0.5-mile radius of the Project area, the Project site will not impact these sites. Therefore, there will be no impact.
- c) The Project site is not located on a known formal or informal cemetery. No impacts to human remains, including those interred outside of formal cemeteries are anticipated. In the event that unknown human remains are uncovered during construction activities, Sections 7052 and 7050.5 of the California Health and Safety (HSC) will require that the Riverside County Coroner’s Office to be contacted within 24 hours and that all construction activities shall be halted until a clearance is given by that office and any other involved agencies. If human remains are discovered, the County shall comply with the requirements of Public Resources Code Section 5097.98, as amended by AB 2641. With adherence to existing laws and codes, potential impacts with regard to disturbing human remains will be less than significant.
- d) There are no known religious or sacred uses within the Project site. There will be no impact.

Mitigation: None

Monitoring: None

10. Paleontological Resources

a) Directly or indirectly destroy a unique paleontological resource, or site, or unique geologic feature?

Source: Cultural Resources Inventory, Chambers Group Inc., 2007; Riverside County General Plan Figure OS-8 “Paleontological Sensitivity”

Findings of Fact:

- a) The Project site is situated upon surface exposures of recent alluvium (Chambers, 2007). This lithologic unit has low potential to contain significant nonrenewable paleontological resources. However, this recent alluvium overlies sediments of older Pleistocene age units in the subsurface at an undetermined depth that have potential to yield remains of plants and extinct terrestrial Pleistocene vertebrates. Excavation for the Project’s placement of loose riprap is not expected to exceed ten feet below the existing elevation surface of the Smith Creek channel bed. In addition, Section 5097.5(a) of the Public Resource Code protects paleontological resources by mandating that, if encountered, the resource may not be disturbed without the consent of the public agency having jurisdiction over the land. Impact would be less than significant.

Mitigation:

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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MM CR 1: If paleontological resources are encountered during ground disturbance, a paleontological monitor shall be notified to identify, remove, document, and evaluate the find. Recovered specimens must be curated in a museum repository with permanent retrievable storage (e.g., San Bernardino County Museum). A report shall be submitted to the County of Riverside along with confirmation of the curation of recovered specimens into an accredited museum repository.

Monitoring: County of Riverside EDA, Project Construction Manager

GEOLOGY AND SOILS

Would the project

11. Alquist-Priolo Earthquake Fault Zone or County Fault Hazard Zones	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Be subject to rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Source: Riverside County General Plan Figure S-2 "Earthquake Fault Study Zones," CHJ Inc. Geotechnical Investigation, 2007, 2011; RCLIS.

Findings of Fact:

a-b) The Project would not expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving rupture of a known earthquake fault. The Alquist-Priolo Earthquake Fault Zoning Act was passed in 1972 to mitigate the hazards of surface faulting and fault rupture to built structures. Fault rupture generally occurs within 50 feet of an active fault line and is limited to the immediate area of the fault zone where the fault breaks along the surface. The Proposed Project site is not located within an Alquist-Priolo Earthquake Fault Zone. No active or potentially active faults are shown on or in the immediate vicinity of the published geologic maps. No evidence for active faulting on or immediately adjacent to the site was observed during the geologic reconnaissance or on the aerial photographs reviewed (Chambers, 2007). The closest mapped fault is a section of the San Gorgonio Pass Fault Zone, which is approximately 2.25 miles north of the site. No impact would occur.

Mitigation: None

Monitoring: None

12. Liquefaction Potential Zone	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
a) Be subject to seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Source: Riverside County General Plan Figure S-3 "Generalized Liquefaction" CHJ Inc. Geotechnical Investigation, 2007, 2011.

Findings of Fact:

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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a) According to the Geotechnical Investigation conducted by CHJ (2007) for the Phase III expansion site, the depth to water in State Well No. T1S/R1E14A01S, located approximately 1.5 miles northeast of the site, was 368 feet on April 28, 1999. The depth to water in State Well No. T1S/R1E14B01S, located approximately 1.5 miles northeast of the site was 411 feet on May 18, 2006. Depth to water in State Well No. T1S/R1E10N01S, located approximately 1.5 miles north of the site was 488 feet on November 1, 2005. Nonetheless, the Project site, as a portion of the Smith Correctional Phase III southern boundary (APN: 543-170-006, 543-170-007, 543-170-009, 543-170-010, 543-170-011, 543-170-018 and 543-170-020), is located within an area identified by the Riverside County General Plan (see Figure S-3) as having sediments susceptible to earthquake induced liquefaction and/or settlement. Since the 2007 CHJ report indicated that groundwater depth for the Phase III area would be anticipated to be greater than 300 feet and that results from the 2011 CHJ report showed no free groundwater encountered within any of the exploratory borings performed within the Project site, the potential for liquefaction-induced settlement is considered not to be a hazard. Therefore, Project impacts in this regard are considered less than significant.

Mitigation: None

Monitoring: None

13. Ground-shaking Zone

a) Be subject to strong seismic ground shaking?

Source: CHJ Inc. Geotechnical Investigation, 2007, 2011; Riverside County General Plan Figure S-4 "Earthquake-Induced Slope Instability Map," and Figures S-13 through S-21 (showing General Ground Shaking Risk)

Findings of Fact:

a) The Project site is located in a region known to be seismically active to which seismic shaking of the site can be expected throughout the lifetime existence of the Project. However, as indicated in the Geotechnical Investigation conducted by CHJ (2011), graphical output calculations for slope stability indicated that, "the proposed finished slope with rock protection should be sufficiently stable against gross failure for both static and seismic conditions." Therefore, the Project's impact with regard to seismic ground shaking is considered less than significant.

Mitigation: None

Monitoring: None

14. Landslide Risk

a) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, collapse, or rockfall hazards?

Source: CHJ Inc. Geotechnical Investigation, 2011; On-site Inspection, Riverside County General Plan Figure S-5 "Regions Underlain by Steep Slope"

Findings of Fact:

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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a) Observation of the Project site's topography consists of varying slope inclination from 4 horizontal to 1 vertical [4(h):1(v)] to 2(h):1(v) with the north bank consisting of non-cohesive soils including areas of buried loose riprap, an area with loose riprap with concrete and a portion of the slope covered with plastic tarp and sand bag protection from recent storm events occurring in December 2010 (CHJ, 2011). The Project proposes to alleviate erosion potential to the north bank by constructing a 2(h) to 1(v) slope of loose riprap consisting of 3-1/2 feet (boulder size) of 1/2-ton class rock extending to a depth of approximately 10 feet below Smith Creek wash, which would significantly reduce impacts to landslide risk. There, impacts with project implementation will be less than significant.

Mitigation: None

Monitoring: None

15. Ground Subsidence

a) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in ground subsidence?

Source: CHJ Inc. Geotechnical Investigation, 2007, 2011; RCLIS; County Board of Supervisors Resolution No. 94-125.

Findings of Fact:

a) The Riverside County Land Information System (RCLIS) identifies the Project site as being within an area susceptible to ground subsidence. This potential can result from severe seismic shaking that causes dry sands to densify, resulting in settlement expressed at ground surface. Seismic settlement in dry soils generally occurs in loose sands and silty sands. Cohesive and fine-grained soils are less prone to significant settlement.

As indicated in the CHJ Geotechnical Investigation (2011) (Appendix E), exploratory boring for the Project site's upper soils consisted of fill material typically comprised of fine to medium grained silty sand (SM) with gravel and cobbles. Underlying native soils consisted of interbedded silty sands (SM), poorly-graded sands (SP) with gravel and were generally medium dense to a maximum depth of 31-1/2 feet. Based upon these conditions encountered, excessive settlement appears unlikely for the Project as long as recommendations listed in the Geotechnical Investigation (2011) with regard to ground subsidence are fulfilled [(i.e., compliance with 90 percent compaction and with Active Standard Test Method (ASTM) D 1557)]. Therefore, the Project's compliance with **MM GEO 1** requiring a geotechnical engineer for on-site monitoring of the Project site shall reduce impacts to less than significant.

Mitigation:

MM GEO 1: A licensed geotechnical engineer shall be appointed to the Project to provide a pre-construction meeting between the Project developer, contractor and landowner prior to commencement of initial grading activities. Said geotechnical engineer shall also be appointed on-site to monitor stages of grading operations and report status to the Project developer in order to fulfill compliance with recommendations outlined in the Geotechnical Investigation (2011).

Monitoring:

Riverside County Department of Engineering

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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16. Other Geologic Hazards

a) Be subject to geologic hazards, such as seiche, mudflow, or volcanic hazard?

Source: On-site Inspection, Project Application Materials

Findings of Fact:

a) The expansion site and construction staging areas are not located in an area susceptible to seiche, mudflow, or volcanic hazards. No impact would occur.

Mitigation: None

Monitoring: None

17. Slopes

a) Change topography or ground surface relief features?

b) Create cut or fill slopes greater than 2:1 or higher than 10 feet?

c) Result in grading that affects or negates subsurface sewage disposal systems?

Source: Riv. Co. 800-Scale Slope Maps, Project Application Materials, CHJ Inc. Geotechnical Investigation, 2011

Findings of Fact:

a) The Project site area is not affected by significant topography (i.e., abrupt elevation change), surface relief features, or slopes, nor will the project change existing topography. Observation of site topography indicates that development of the Project site may entail cuts and fills on the order (cut-to-fill) of 15 to 20 feet, respectfully (Chambers, 2011). In addition, as seen in Figures 2a and 2b, slope revetment will reduce the width of Smith Creek wash to an average of 12 feet wide for the length of slope revetment (1,100 feet) installed. However, this is a minimal change for ground surface relief as runoff and peak flow will continue to flow downstream without being not slowed (in feet per second (fps)) or obstructed from placement of slope revetment. Lastly, as seen in Figures 2a and 2b, the Project will make minor grading cuts into the north bank abutting the correctional facility, and at the same time maintain the majority of existing slope topography from further erosion. Therefore, Project impacts with regard to changing topography would be less than significant.

b) As recommended in the Geotechnical Investigation (2011), slopes should be no steeper than 2(h): 1(v). Implementation of MM GEO 1 in requiring a geotechnical engineer for on-site monitoring would ensure that this recommendation is fulfilled. Although the Project's cut and fill slopes may exceed 10 feet in vertical height, the proposed materials (as discussed in 14a.) would reinforce and stabilize the north bank from further erosion. Therefore, Project impacts in this regard are considered less than significant.

c) The Project's grading will not affect or negate subsurface sewage disposal systems as there are no sewage disposal systems near to the Project. Additionally, prior to excavation activities, the contractor must contact Underground Storage Alert (USA) to ensure that no underground utility lines and/or pipes will be encountered. Therefore, no impact would occur.

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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Mitigation: None

Monitoring: None

18. Soils

a) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Be located on expansive soil, as defined in Section 1802.3.2 of the California Building Code (2007), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Have soils incapable of adequately supporting use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Source: CHJ Inc. Geotechnical Investigation, 2007, 2011; U.S.D.A. Soil Conservation Service Soil Surveys, Project Application Materials, On-site Inspection

Findings of Fact:

- a) The Project's proposed slope stabilization would retain north bank soils from further erosion and undercutting by constructing a 2(h) to 1(v) slope of loose riprap consisting of 3-1/2 feet (boulder size) of 1/2-ton class rock extending to a depth of approximately 10 feet below Smith Creek wash. The Project is therefore considered as a beneficial impact with regard to alleviating soil erosion. Therefore, there would be no impact.
- b) The Project is located specifically on upper soils consisting of fill material typically comprised of fine to medium grained silty sand (SM) with gravel and cobbles. Underlying native soils consisted of interbedded silty sands (SM), poorly-graded sands (SP) with gravel and were generally medium dense to a maximum depth of 31-1/2 feet (CHG, 2011). Since clay layers were not encountered in bore hole tests, the potential for expansive soils is considered low. Furthermore, the Project does not involve dwelling or building unit construction, but involves placement of heavily weighted 1/2 ton, 3-1/2 foot sized boulder loose riprap on top of fills prepared to a minimum relative compaction of 90 percent in accordance with ASTM D 1557. Therefore, impacts with regard to expansive soils are considered less than significant.
- c) The Project does not involve the installation of septic tanks or alternative wastewater disposal systems. Therefore, there will be no impact.

Mitigation: None

Monitoring: None

19. Erosion

a) Change deposition, siltation, or erosion that may modify the channel of a river or stream or the bed of a lake?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in any increase in water erosion either on or off site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Source: U.S.D.A. Soil Conservation Service Soil Surveys

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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Findings of Fact:

- a) The Project involves placement of heavily weighted 1/2 ton, 3-1/2 foot sized boulder loose riprap on the northern bank of Smith Creek, and in turn, would eliminate the possibility of depositional change, siltation, undercutting or erosion. Therefore, there would be no impact.
- b) The Project will not result in any increase in water erosion on-, or off-site. The Project site's surficial soils consisting of fine to medium grained silty sand (SM) with gravel and cobbles has moderate susceptibility to erosion by water. However, standard erosion control measures and best management practices (BMPs) will be included during site grading and construction activities as outlined in the Stormwater Pollution Prevention Plan (SWPPP), which will be prepared specifically for the Project. Lastly, the Project's placement of heavily weighted 1/2 ton, 3-1/2 foot sized boulder loose riprap on the northern bank of Smith Creek will, after post-construction, divert runoff, thus stabilizing embankment soils from water erosion. Therefore, the Project's impact with regard to water erosion is considered less than significant.

Mitigation: None
Monitoring: None

20. Wind Erosion and Blowsand from project either on or off site.

a) Be impacted by or result in an increase in wind erosion and blowsand, either on or off site?

Source: CHJ Inc. Geotechnical Investigation, 2011, Riverside County General Plan Figure S-8 "Wind Erosion Susceptibility Map," Ord. 460, Sec. 14.2 & Ord. 484

Findings of Fact:

- a) According to the Riverside County General Plan, the Project site is located within in a moderate area for wind erosion. The Project site is located specifically on upper soils consisting of fill material typically comprised of fine to medium grained silty sand (SM) with gravel and cobbles (CHG, 2011). Medium grained, silty sands are susceptible to wind erosion and have potential to be disrupted during the grading process. To alleviate this potential, grading and construction activities will be required to comply with SCAQMD Rule 403, to prevent wind erosion during wind-related events (i.e., Santa Ana winds). Lastly, the placement of heavily weighted 1/2 ton, 3-1/2 foot sized boulder loose riprap on the northern bank of Smith Creek will, after post-construction, stabilize soils from being eroded by wind.
- b) Compliance with Rule 403 as well as Ordinance 484, regulating the control of blowing sand, will reduce potential impacts to below the level of significance and as such, no additional measures are required to control wind erosion during construction. Therefore, the Project's impact with regard to wind erosion and blowsand is considered less than significant.

Mitigation: None
Monitoring: None

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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GREENHOUSE GAS EMISSIONS

Would the project

21. Greenhouse Gas Emissions

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

Source: CalEEMod 2011.1.1 model, Appendix A

Findings of Fact:

a) Carbon dioxide emissions resulting from Project demolition, construction, and site remediation activities were calculated using the CalEEMod model, and include emissions resulting from on-road and off-road diesel fuel consumption as well as worker commutes and site visits during site remediation activities.

As presented below in Table 3, the total operational carbon dioxide emissions generated as a result of the Project is approximately 234.49 metric tons (MT) of carbon dioxide equivalent greenhouse gases (CO₂e).

Table GHG-1 Annual Project-Related CO₂ Emissions

Source	Annual Emissions (MT)			
	CO ₂	CH ₄	N ₂ O	CO ₂ e
Construction Emissions	233.80	0.03	0	234.49
Notes: Total Emissions from all Project Phases of Development (Clearing, Grading and Construction).				

In comparison to global CO₂ emissions of approximately 26.4 giga tonnes, the project's CO₂e emissions of 234.49 metric tonnes comprise approximately 0.00000089 percent of the Earth's total annual CO₂ emissions from fossil fuel combustion. Compared to California's statewide annual CO₂ emissions of approximate 412 million MT, the project's contribution represents approximately 0.000057 percent of statewide emissions. The Project will not result in any significant long-term greenhouse gas emissions once construction activities are complete. Therefore, the Project's GHG emissions do not constitute a substantial contribution to global climate change and will not result in significant impacts on the environment.

b) The County of Riverside has adopted policies and programs in its General Plan to promote the use of clean and renewable energy sources, facilitate alternative modes of transportation, and for the sustainable use of energy. However, because the County does not have an adopted plan (e.g. Climate Action Plan or GHG Reduction Plan) or regulation, the CARB Scoping Plan has been used for the purposes of this analysis.

The CARB Scoping Plan calls for a reduction in California's GHG emissions by approximately 30 percent as compared to business-as-usual projections for 2020, or about 10 percent from today's levels.

Since the Project only includes the demolition of a structure and associated site remediation activities and will not result in any long-term operational greenhouse gas emissions, the Project does not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases. Therefore, the impact is considered less than significant.

Mitigation: None

Monitoring: None

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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HAZARDS AND HAZARDOUS MATERIALS

Would the project

22. Hazards and Hazardous Materials

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?

c) Impair implementation of or physically interfere with an adopted emergency response plan or an emergency evacuation plan?

d) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

e) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?

Source: Riverside County Land Information System (RCLIS); California Environmental Protection Agency's Cortese List; Geotracker; Envirostor; Project Application Materials.

Findings of Fact:

- a) The Project would not create a significant hazard to the public or environment through the routine transport or disposal of hazardous materials. The Project involves the construction of a 2:1 slope of pervious, loose riprap consisting of 3-1/2 foot (boulder size) of 1/2-ton class rock, which would be the dominant material transported to the site. Project equipment (i.e., backhoe, dump truck) involved would be fueled offsite at a designated location and would have BMPs specific towards spill prevention as specified in the Project's required SWPPP. Lastly, Project construction is short-term and would not require continued maintenance. Therefore, impacts in this regard are considered less than significant.
- b) The Project does not propose a land use that would have the potential for the release of hazardous materials into the environment. Therefore, there would be no impact.
- c) The Project will not physically conflict with the implementation of an adopted emergency response or evacuation plan. Project site plans would be subject to review by the County's Deputy Fire Chief to assure that the established emergency response and evacuation plan for the Project will not block emergency access to the Project site or the Correctional Facility grounds. Therefore, impacts in this regard are considered less than significant.
- d) There is no existing or a proposed school within one-quarter mile radius of the Project site. The nearest school is Banning High School, which is 0.44 mile northwest of the Project. The Project (slope armor protection) does not propose land uses or activities, which would emit, use, handle, or dispose of hazardous materials. Therefore, there would be no impact.

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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e) Research of the California Environmental Protection Agency's (EPA) Cortese List Data Resources revealed that the Project is not located on known hazardous materials site. The Cortese List indicated that the Project site contains no above- or below-ground storage tanks (AST, UST), soil stains, or other types of potential hazards to the public. Therefore, there would be no impact.

Mitigation: None

Monitoring: None

23. Airports

a) Result in an inconsistency with an Airport Master Plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Require review by the Airport Land Use Commission?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) For a project within the vicinity of a private airstrip, or heliport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Source: Riverside County Land Information System (RCLIS); Riverside County Airport Land Use Commission (RCALUC); Riverside County General Plan Figure S-19 "Airport Locations," GIS database

Findings of Fact:

- a) The Project site is not located within an adopted Airport Master Plan. The nearest adopted Airport Master Plan is the Banning Municipal Airport Master Plan, adopted by the City of Banning in 1989. Banning Municipal Airport is located approximately 1.12 miles (insert direction) of the Project site and abuts the northern boundary of the Project's assessor parcel number (APN 543-170-007). Therefore, there would be no impact.
- b) The Project site is not located within Banning Municipal Airport's Compatibility Zone as designated by Riverside County Airport Land Use Commission (RCALUC). Therefore, there would be no impact.
- c) Although the Project site is located within 2-miles of Banning Municipal Airport (1.12 mile), the project would not result in a safety hazard for people working in the area. The Project is a non-elevated structure consisting of a 2:1 slope of loose riprap and extending 1,100 feet along the northern embankment of Smith Creek and would not obstruct flight patterns. Therefore, there would be no impact.
- d) The Project is not located within the vicinity of a private airstrip or heliport. Therefore, there would be no impact.

Mitigation: None

Monitoring: None

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
24. Hazardous Fire Area	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
a) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Source: RCLIS (GIS Database), Eastern Coachella Valley Area Plan Figure S-10 "Wildfire Susceptibility"

Findings of Fact:

- a) According to Riverside County Land Information System (RCLIS), the Project site is located within a high fire area. Although the Project is within 0.11 mile from the heavier vegetative foothill base of the San Jacinto Mountain range, the Project contains minor amounts of vegetation (grasses) as it abuts the northern side of Smith Creek drainage (see Photos: 1A and 1B). Furthermore, the Project would not increase the site and surrounding locale's susceptibility to wildland fires beyond the existing condition. Therefore, impacts with regard to risk from wildfire are considered less than significant.

Mitigation: None

Monitoring: None

HYDROLOGY AND WATER QUALITY

Would the project

25. Water Quality Impacts

a) Substantially alter the existing drainage pattern of the site or area, including the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create or contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Place housing within a 100-year flood hazard area, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) Include new or retrofitted stormwater Treatment Control Best Management Practices (BMPs) (e.g. water quality treatment basins, constructed treatment wetlands), the operation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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of which could result in significant environmental effects (e.g. increased vectors or odors)?

Source: Basis of Design Report; Jurisdictional Wetland Resources Report.

Findings of Fact:

- a) The Project will not substantially alter the existing drainage pattern in a manner of resulting in erosion or siltation. As indicated in the Basis of Design Report (Appendix D), estimate rates for 10-year peak flow rate for Smith Creek was approximately 7,400 cubic feet per second (cfs) and for 25 year peak flow rate at approximately 9,000 cfs. Velocities for 100-year flow were found to range between 4.7 to 17.2 feet per second (fps). Although installation of slope armor will narrow the width of Smith Creek for approximately 1,100 feet (as shown in Figure 3a and 3b), alteration will improve the slope stability and will provide a better defense against erosion. Construction erosion impacts will be minimized with compliance with the CWA/NPDES. Therefore the impact would be less than significant.
- b) The Project will not violate any water quality standards or waste discharge requirements. The Project is a non-residential development that involves construction of a 2:1 slope of loose riprap extending 1,100 feet along the northern embankment of Smith Creek to prevent future erosion and undercutting along an embankment abutting the northern side of Smith Creek. Furthermore, an administered Storm Water Pollution Prevention Plan (SWPPP) with best management practices (BMPs) shall be implemented by the assigned Project Contractor during Project construction to alleviate potential impacts to water quality (i.e., turbid discharge, siltation, etc.). Therefore, Project impacts in this regard are considered less than significant.
- c) The Project will not utilize any water other than for construction (fugitive dust control). Therefore, there would be no impact.
- d) The Project will not create or contribute to runoff that would exceed capacity of existing or planned stormwater drainage systems. The Project will not increase runoff over existing conditions. Therefore, there would be no impact.
- e) The Project does not include housing and will not place housing within a 100-year flood hazard area. Therefore, there would be no impact.
- f) The Project does not include any structures and will not place any structures within a 100-year flood hazard area. Therefore, there would be no impact.
- g) The Project will not substantially degrade water quality. As discussed in the previous responses, the project is required to comply with the CWA/NPDES and will implement a Storm Water Pollution Prevention Plan (SWPPP) with best management practices (BMPs) that will mitigate for water quality/erosion. Therefore, Project impacts in this regard are considered less than significant.
- h) The Project does not include a new or retrofitted Stormwater Treatment Control Best Management Practice. Improving the bank will improve the slope stability and will provide a better defense against erosion. Therefore, there would be no impact.

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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Mitigation: None

Monitoring: None

26. Floodplains

Degree of Suitability in 100-Year Floodplains. As indicated below, the appropriate Degree of Suitability has been checked.

NA - Not Applicable U - Generally Unsuitable R - Restricted

a) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Changes in absorption rates or the rate and amount of surface runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam (Dam Inundation Area)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Changes in the amount of surface water in any water body?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Source: Basis of Design Report; Riverside County General Plan Figure S-9 "100- and 500-Year Flood Hazard Zones," Figure S-10 "Dam Failure Inundation Zone," Riverside County Flood Control District Flood Hazard Report/Condition, GIS database, Jurisdictional Wetland Resources Report.

Findings of Fact:

- a) The Project will not substantially alter the existing drainage pattern in a way that would result in flooding. As discussed in 25a, installation of slope revetment will narrow the width of Smith Creek for approximately 1,100 feet (as shown in Figure 2a and 2b), which will contain and direct peak runoff flow downstream. As discussed in the Basis of Design Report (Appendix D), the proposed slope revetment will match the existing 2:1 slope of 1/2 ton rip rap section, which was constructed by Riverside County Flood Control District back in 1988 (see Photo 1A). To date, this existing slope armor has not failed nor has required excessive maintenance. Installation of slope revetment to match the existing will enhance containment of runoff and peak flow along the 1,100 foot portion of Smith Creek, thereby reducing impacts in this regard to less than significant.
- b) The Project will not add or contribute to increased absorption rates or runoff. The Project area will consist of a 2:1 slope of pervious, loose riprap consisting of 3-1/2 foot (boulder size) of 1/2-ton class rock extending to a depth of approximately 10 feet below Smith Creek wash, and to extend 1,100 feet along the northern embankment of Smith Creek. Therefore, Project impacts in this regard are considered less than significant.
- c) The Project will not expose people or structures to risk of flood or dam failure. The Project will consist of a 2:1 slope of pervious, loose riprap consisting of 3-1/2 foot (boulder size) of 1/2-ton class rock extending to a depth of approximately 10 feet below Smith Creek wash. Therefore, there will be no impact.

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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d) The Project will not create changes in surface water in a water body. As discussed in the Jurisdictional Wetland Resources Report (Appendix C), the Project area resides along the northern bank of Smith Creek, which contains a sandy channel mainly devoid of vegetation due to regular scouring. Therefore, there will be no impact.

Mitigation: None

Monitoring: None

LAND USE/PLANNING

Would the project

27. Land Use

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Result in a substantial alteration of the present or planned land use of an area? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Affect land use within a city sphere of influence and/or within adjacent city or county boundaries? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Source: RCIP, RCLIS (GIS Database), Project Description

Findings of Fact:

a-b) The Project would not result in substantial alteration to an existing designated land use and would not affect the land use within a city sphere of influence (City of Banning). The Project proposes the installation of embankment protective measures to be installed along the northeastern bank of Smith Creek adjacent to the Larry David Smith Correction Facility. The project does not propose any alteration of present or planned land use designation. Therefore, there would be no impact.

Mitigation: None

Monitoring: None

28. Planning

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Be consistent with the site's existing or proposed zoning? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Be compatible with existing surrounding zoning? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Be compatible with existing and planned surrounding land uses? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Be consistent with the land use designations and policies of the Comprehensive General Plan (including those of any applicable Specific Plan)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) Disrupt or divide the physical arrangement of an established community (including a low-income or minority community)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Source: Riverside County General Plan Land Use Element, Staff review, RCLIS (GIS Database)

Findings of Fact:

a-b) The Project would be compatible and consistent with existing and surrounding zoning. Current zoning for the Project is designated as Residential Agriculture (R-A). The Project proposes the construction of

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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embankment protective measures (slope armor) that would not alter the project area's existing and surrounding zoning. Therefore, there would be no impact.

- c) The Project is compatible with existing and surrounding land uses as the project would not alter the land use aspect within or around the project area. Therefore, there would be no impact.
- d) The Project is consistent with the region's land use designations and policies of the Comprehensive Plan. Current land use for the Project is designated Rural Residential (R-R). The Project (slope armor) would not alter the land use aspect within or around the Project area. Therefore, there would be no impact.
- e) The Project proposes the installation of embankment protective measures (slope armor) that would not disrupt or divide the physical arrangement of an established community. Therefore, there would be no impact.

Mitigation: None

Monitoring: None

MINERAL RESOURCES

Would the project

29. Mineral Resources

a) Result in the loss of availability of a known mineral resource that would be of value to the region or the residents of the State?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be an incompatible land use located adjacent to a State classified or designated area or existing surface mine?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Expose people or property to hazards from proposed, existing or abandoned quarries or mines?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Source: Riverside County General Plan Figure OS-5 "Mineral Resources Area"

Findings of Fact:

- a) As indicated in Figure OS-5 of the Riverside County General Plan, the Project site is located within Mineral Resource Zone 3 (MRZ 3), which is defined as:

"Areas where the available geologic information indicates that mineral deposits are likely to exist, however, the significance of the deposit is undetermined."

Although the Project is located within MRZ 3, the existing designated land use (Residential Agriculture) does not permit mining activities. Therefore, there would be no impact.

- b-c) The Riverside County General Plan defines Mineral Resource Zone 2a and 2b as:

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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"Areas where the available geologic information indicates that there are, or is a likelihood of significant mineral deposits to occur."

As indicated in Figure OS-5 of the Riverside County General Plan, the Project site is not located within or near to Mineral Resources: 2a and 2b. Therefore, impacts from the Project resulting in the loss of availability of a locally-important mineral resource is considered less than significant.

- d) No abandoned, existing, or proposed quarries or mines are located at or within the project area vicinity. The Project proposed (slope revetment) would not create, or expose people to hazards from mines or quarries. Therefore, there would be no impact.

Mitigation: None

Monitoring: None

NOISE

Would the project result in

Definitions for Noise Acceptability Ratings

Where indicated below, the appropriate Noise Acceptability Rating(s) has been checked.

NA - Not Applicable

A - Generally Acceptable

B - Conditionally Acceptable

C - Generally Unacceptable

D - Land Use Discouraged

30. Airport Noise

a) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport would the project expose people residing or working in the project area to excessive noise levels?

NA A B C D

b) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?

NA A B C D

Source: Riverside County General Plan Figure S-19 "Airport Locations," County of Riverside Airport Facilities Map; Riverside County Airport Land Use Commission (RCALUC) "Airport Maps".

Findings of Fact:

- a-b) The Project site is not within an airport influence area boundary (private and public) or affected by airport safety zones as identified by Riverside Airport Land Use Commission (RALUC). The nearest airport is Banning Municipal Airport, which is 1.12 miles to the northeast. While the project is within two miles of a municipal airport, noise would be regulated by the County of Riverside Ordinance 847 which sets limits on when noise related to construction can occur. Therefore, impacts with regard to exposure from excessive noise levels would be considered less than significant.

Mitigation: None

Monitoring: None

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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31. Railroad Noise

NA A B C D

Source: Riverside County General Plan Figure C-1 "Circulation Plan", RCIP: Appendix I: Noise Element Technical Data.

Findings of Fact:

The Project site is approximately 0.95 mile (5,016 ft.) south of the heavily-traveled Union Pacific Railroad line with rural and residential development located in between and outside of the 60 decibel Community Noise Equivalent Level (CNEL) contour (rail line to 1,929 ft. out). Therefore, there would be no impact.

Mitigation: None

Monitoring: None

32. Highway Noise

NA A B C D

Source: Riverside County General Plan; RCIP: Appendix I: Noise Element Technical Data, Project Application Materials.

Findings of Fact:

The Project site is approximately 0.12 miles (633 ft.) north of State Highway 243, a State Scenic Highway and mountain arterial highway, and is located outside of the 60 decibel Community Noise Equivalent Level (CNEL) contour (centerline to 309ft. out). Therefore, there would be no impact.

Mitigation: None

Monitoring: None

33. Other Noise

NA A B C D

Source: Project Application Materials, RCLIS (GIS Database)

Findings of Fact:

There are no other noise impacts related to the proposed Project. There will be no impact.

Mitigation: None

Monitoring: None

34. Noise Effects on or by the Project

a) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?

b) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?

c) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
ordinance, or applicable standards of other agencies?				
d) Exposure of persons to or generation of excessive ground-borne vibration or ground-borne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Source: Riverside County General Plan, Table N-1 ("Land Use Compatibility for Community Noise Exposure"); Project Application Materials, Riverside County Ordinance 847

Findings of Fact:

- a) The Project will not create a permanent increase in ambient noise as it is an erosion control based improvement for a County owned facility (Smith Correctional Facility) consisting of (slope revetment) for embankment protective purposes. While there would be a temporary increase in noise levels during project construction, there would be no permanent increase in ambient noise levels once construction is completed. Therefore, there would be no impact.
- b-c) Temporary, short-term, or periodic increases in noise levels would occur during construction and may exceed daytime (7 a.m. to 10 p.m.) thresholds (45 dBA) for the land use in which the Project resides in (Rural Residential). However, there are no residences within this land use in adjacency to the Project site. Nearest residences to the Project are located 0.15 mile north within the City of Banning. These residences have a City land use designation of Very Low Density Residential, which sets daytime noise thresholds not to exceed 55 dBA. To alleviate potential for Project generated noise levels in reaching local residences in exceedance of 55 dBA, construction activity will be required to adhere to County Noise Ordinance 847. This Ordinance requires construction activity to be restricted between the hours of 7 a.m. and 7 p.m. from Monday through Saturday, and with no construction to occur on Sunday or during public holidays. Furthermore, all construction vehicles or equipment would be required to be equipped with properly operating and maintained mufflers. Therefore, Project impacts with regard to substantial temporary increases in noise and exposure to generated noise levels in exceedance of standards will be less than significant.
- d) Although construction activities could generate, temporary ground-borne noise and vibrations during grading and compaction, the Project would not impact sensitive receptors within the vicinity as there are no residences adjacent to the Project. Therefore, there would be no impact.

Mitigation: None

Monitoring: None

POPULATION AND HOUSING Would the project

35. Housing				
a) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a demand for additional housing, particularly housing affordable to households earning 80% or less of the County's median income?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Affect a County Redevelopment Project Area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Cumulatively exceed official regional or local popu-	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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lation projections?

f) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Source: Project Description, RCLIS (GIS Database), Riverside County General Plan Housing Element

Findings of Fact:

a-f) The Project site is not near to or adjacent to any residences and will not result in the displacement of existing housing, induce population growth, create a demand for additional housing, displace area residents, affect a County Redevelopment Project Area, or cumulatively exceed regional or local populations. The Project involves construction of a 2:1 slope of loose riprap to extend 1,100 feet along the northern embankment of Smith Creek adjacent to the correctional facility. The Project will not have influence on above mentioned factors related to population and housing. Therefore, there would be no impact.

Mitigation: None

Monitoring: None

PUBLIC SERVICES

Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered government facilities or the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

36. Fire Services	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Source: Riverside County General Plan Safety Element

Findings of Fact:

The Project will not have a substantial impact on fire services. The Project (slope revetment) is an erosion control based improvement that will not obstruct access to private or public roads. The nearest facility is Banning Fire Station No. 89, which is 1.14 miles north of the Project at 172 North Murray Street in Banning and would serve the Project if an emergency event were to occur during construction. Therefore, impacts with regard to fire services are considered less than significant.

Mitigation: None

Monitoring: None

37. Sheriff Services	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Source: RCIP

Findings of Fact:

The Project will not have a substantial impact on sheriff services. Police protection services for the Project area would be provided by the County of Riverside Sheriff's Department, which operates the Smith Correctional

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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Facility immediately adjacent to the Project. Therefore, the Project's impact to Sheriff Services is considered less than significant.

Mitigation: None

Monitoring: None

38. Schools

Source: Google Maps, RCLIS (GIS Database)

Findings of Fact:

The Project will not have a substantial impact on schools. The nearest school is Banning High School, which is 0.44 mile northwest of the Project. The Project (slope revetment) is a, non-residential/commercial development that would not induce population growth in necessitating the need for more schools. Therefore, there would be no impact.

Mitigation: None

Monitoring: None

39. Libraries

Source: RCIP, Google Maps

Findings of Fact:

The Project will not have a substantial impact on libraries. The Project (slope revetment) is a non-residential/commercial development that would not induce population growth in necessitating the need for more libraries. Therefore, there would be no impact.

Mitigation: None

Monitoring: None

40. Health Services

Source: RCIP

Findings of Fact:

The Project will not have a substantial impact on Health Services. The Project (slope revetment) is a non-residential/commercial development that would not induce population growth in necessitating the need for more Health Services. Therefore, there would be no impact.

Mitigation: None

Monitoring: None

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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RECREATION

41. Parks and Recreation

a) Would the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

b) Would the project include the use of existing neighborhood or regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

c) Is the project located within a Community Service Area (CSA) or recreation and park district with a Community Parks and Recreation Plan (Quimby fees)?

Source: GIS database, Ord. No. 460, Section 10.35 (Regulating the Division of Land – Park and Recreation Fees and Dedications), Ord. No. 659 (Establishing Development Impact Fees), Parks & Open Space Department Review

Findings of Fact:

a-c) The Project will not have an impact from park creation, park deterioration, or location within a County Service Area (CSA). The Project is a non-residential development that proposes the installation of embankment protective measures (slope revetment) on the north side of Smith Creek. Therefore, there will be no impact.

Mitigation: None

Monitoring: None

42. Recreational Trails

Source: Riv. Co. 800-Scale Equestrian Trail Maps, Open Space and Conservation Map for Western County trail alignments, GIS, Project Description

Findings of Fact:

Although no County designated trails are located or identified on or near to the Project site, Smith Creek has, and continues to invite recreational uses for the purpose of equestrian riding. Furthermore, the City of Banning General Plan, proposes for the future development of a 150-acre park at the eastern terminus of Porter Street, which abuts Smith Creek (approx. 0.8 mile east of Project), which could later assist in designating Smith Creek as an equestrian trail. Nonetheless, the Project development will not obstruct Smith Creek as the Project's proposed construction will occur along 1,100 feet of embankment on the north side of Smith Creek, thereby not blocking access to equestrian and hiking uses. Therefore, there will be no impact.

Mitigation: None

Monitoring: None

TRANSPORTATION/TRAFFIC

Would the project

43. Circulation

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Conflict with an applicable plan, ordinance or policy establishing a measure of effectiveness for the performance of the circulation system, taking into account all modes of transportation, including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?				
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Alter waterborne, rail or air traffic?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Cause an effect upon, or a need for new or altered maintenance of roads?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Cause an effect upon circulation during the project's construction?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) Result in inadequate emergency access or access to nearby uses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Conflict with adopted policies, plans or programs regarding public transit, bikeways or pedestrian facilities, or otherwise substantially decrease the performance or safety of such facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Source: RCIP, Site Plan, Site Reconnaissance, ITE Manual

Findings of Fact:

a-i) The Project site will not result in impacts to traffic/transportation. Construction traffic will utilize access via Hargrave Street in which detour and staging route access to the Project site will be determined by the County all prior to Project commencement. Since the Project is not a residential, commercial or Industrial development, improvements to traffic circulation patterns (i.e. street widening) will not be required. The Project involves the construction of a 2:1 slope of loose riprap to extend 1,100 feet along the northern embankment of Smith Creek. Therefore, there will be no impacts with regard to traffic/transportation.

Mitigation: None

Monitoring: None

44. Bike Trails

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Source: RCIP

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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Findings of Fact:

There are no designated bike trails that exist on the Project site. There will be no impact.

Mitigation: None

Monitoring: None

UTILITY AND SERVICE SYSTEMS

Would the project

45. Water

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a. Require or result in the construction of new water treatment facilities or expansion of existing facilities, the construction of which would cause significant environmental effects? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b. Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Source: Staff Review

Findings of Fact:

- a-b) The Project will not require the construction of new water treatment facilities nor would the Project have an impact on sufficient water supplies to serve the Project. Only temporary sources of water supplies (i.e., water trucks) would be needed during Project construction for the purpose of cement mixing and for fugitive dust abatement (PM10) during grading. The Project is a non-residential/commercial development that would not necessitate the need for sufficient water supplies on a continued basis. Therefore, there would be no impact.

Mitigation: None

Monitoring: None

46. Sewer

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a. Require or result in the construction of new wastewater treatment facilities, including septic systems, or expansion of existing facilities, the construction of which would cause significant environmental effects? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b. Result in a determination by the wastewater treatment provider that serves or may service the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Source: On-site Inspection

Findings of Fact:

- a-b) The Project would not result in impacts to sewer facilities. The Project (slope revetment), is a non-residential/commercial development that is not near to, nor would obstruct existing sewage lines connecting to the correctional facility. Therefore, there would be no impact.

Mitigation: None

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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Monitoring: None

47. Solid Waste

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a. Is the project served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b. Does the project comply with federal, state, and local statutes and regulations related to solid wastes including the CIWMP (County Integrated Waste Management Plan)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Source: Riverside County General Plan; Riverside County Waste Management Department; California Department of Resources Recycling and Recovery; RCIP

Findings of Fact:

- a-b) The Project area is currently served by Waste Management, which serves the City of Banning. The Project, being a non-residential/commercial development, would require minimal services with temporary, onsite trash bins (recyclable and non-recyclable) and portable toilet(s). Furthermore, the Project would create minimal quantities of solid waste from construction materials (i.e., rebar scrap) and would be disposed of appropriately with an on-site recyclable bin. Therefore, impacts in regard to solid waste are considered less than significant.

Mitigation: None

Monitoring: None

48. Utilities

Would the project impact the following facilities requiring or resulting in the construction of new facilities or the expansion of existing facilities; the construction of which could cause significant environmental effects?

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Electricity? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Natural gas? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Communications systems? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d) Storm water drainage? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e) Street lighting? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f) Maintenance of public facilities, including roads? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| g) Other governmental services? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Source: RCIP, Phase I ESA, Phase II ESA

Findings of Fact:

- a-g) The Project is an erosion control based improvement that involves slope revetment and would not induce residential or commercial growth in necessitating the need for utilities in the form of electrical, natural gas, or communications systems to which would result in an impact in requiring new or expanded facilities. Therefore there would be no impact.

Mitigation: None

Monitoring: None

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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SUSTAINABILITY

49. Energy Conservation

a) Would the project conflict with any adopted energy conservation plans?

Source: Sustainable Building Policy H-29

Findings of Fact:

a) The Project would be in compliance with state and local regulations. The Project does not include the development of any new uses. Therefore, it would not conflict with an adopted energy conservation plan; it does not proposed the development of any land uses. There will be no impact.

Mitigation: None

Monitoring: None

OTHER

50. Other:

Source: Staff review

Findings of Fact: No other impacts are expected.

Mitigation: None

Monitoring: None

MANDATORY FINDINGS OF SIGNIFICANCE

51. Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self- sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?

Source: Staff review, Project Application Materials, General Habitat Assessment and MSHC Compliance Report; Jurisdictional Wetland Resources Report

Findings of Fact:

Implementation of the project does not have the potential to degrade the quality of the environment. The Project does not have the potential to substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a Rare or Endangered plant or animal, as the Project incorporates mitigation measures: **MM BIO 1 thru MM BIO 7** to reduce Project impacts in regard to Biological Resources to a level of less than significant. The Project does not have the potential to eliminate important examples of the major

Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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periods of California history or prehistory. Nevertheless, in the event cultural, human, or paleontological remains are uncovered during Project construction, mitigation measures: **MM CR 1** shall be implemented to reduce Project impacts in regard to Cultural Resources to a level of less than significant.

52. Does the project have impacts which are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, other current projects and probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Source: Staff review, Project Application Materials

Findings of Fact:

The Project does not have impacts which are individually limited, but cumulatively considerable. As discussed throughout, the Project is a non-residential, Industrial/commercial development primarily directed at flood control abatement. Therefore, there will be no impact.

53. Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Source: Staff review, Project Application Materials

Findings of Fact:

Based on analysis provided in this Initial Study, Project implementation of mitigation measures as discussed in this document and adherence to existing codes, ordinances, regulations, standards, guidelines and implementation of the Storm Water Pollution Prevention Plan (SWPPP), will ensure that the Project will be not create any substantial adverse effects on human beings, either directly or indirectly.

VI. EARLIER ANALYSES

Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration as per California Code of Regulations, Section 15063 (c) (3) (D). In this case, a brief discussion should identify the following:

Earlier Analyses Used, if any:

County of Riverside Environmental Assessment for the Larry D. Smith Correctional Facility Phase III Expansion (2007).

Location Where Earlier Analyses, if used, are available for review:

County of Riverside Planning Department
Lemon Street, 9th Floor
Riverside, CA 92505

VII. LIST OF PREPARERS

Jon Braginton, Environmental Planner, County of Riverside Economic Development Agency
Vikki Kuntz, Environmental Planner, County of Riverside Economic Development Agency

ARRATA/CORRECTION: SUMMARY OF MITIGATION MEASURES

MM BIO 1: Nesting Season Construction Limitations. All native breeding birds, (except game birds) regardless of their listing status, are protected under the Migratory Bird Treaty Act (MBTA). Potential impacts to the breeding birds are considered significant under the California Environmental Quality Act (CEQA). Since nesting birds may occur on site it is important that the Project comply with the MBTA and the California Dept. of Fish and Game (CDFG) Code Regulations 3500 and 3800 which protect nesting birds. In order to comply with these regulations all future clearing, grubbing, tree trimming and tree removals must be conducted outside the bird nesting season. The typical nesting season is often considered February 15th to August 31st.

MM BIO 2: Preconstruction Burrowing Owl Survey: Prior to construction, a 30-day pre-construction burrowing survey shall be conducted to ensure that no burrowing owls are within the grading limits or within 300 feet of construction. If burrowing owls are found within the zone of influence of the project footprint, passive relocation or other acceptable measure may be required.

MM BIO 3: Drainages. If disturbance to Smith Creek is expected during future development, permits and consultation with the state and federal agencies will be required.

MM BIO 4: Night Lighting. No work shall be conducted at night to avoid night lighting entering Smith Creek.

MM BIO 5: Invasive Plants. All equipment shall be power washed with a high pressure air hose prior to entering the Project site to ensure no seeds from invasive plants are brought into the Project site.

MM BIO 6: Run-off. Silt-fencing shall be installed along the grading limit to avoid any loose soil, rocks, or mud from entering riparian areas on and adjacent to the site.

MM BIO 7: Restrictive Covenant Area. A restrictive covenant shall be established over 4.7 acres within Smith Creek and along the southern bank and upland area shall be created as part of a DBESP to address impacts to the Los Angeles pocket mouse and mitigation for the project's Riverine/Riparian impacts shall occur within this area.

MM BIO 8: Fremont Cottonwood Trees. The project shall plant five Fremont cottonwood trees to replace the one that will be removed by the slope armoring (5:1 mitigation ratio).

MM BIO 9: Mulefat/Willow Scrub. The project shall create 0.25 acres of mulefat/willow scrub within the restrictive covenant area to mitigate for the impacts to the 0.05 acres of mulefat/willow scrub.

MM BIO 10: Compensatory Land. The project shall secure and replace the riparian vegetation at a 1.4:1 ratio for all impacts to jurisdictional areas.

MM BIO 11: Habitat Monitoring and Management Plan. In addition to any required revegetation per the 1600 agreement, the project will prepare a Habitat Monitoring and Management Plan (HMMP) for the restrictive covenant area which shall address removal of invasive non-native species within this area of Smith Creek. Annual reports documenting the progress of removal of non-native species shall be prepared for a minimum of five years. Annual reports shall be prepared until the results indicate that the habitat is stable and is providing the desired benefits.

MM CR 1: If paleontological resources are encountered during ground disturbance, a paleontological monitor shall be notified to identify, remove, document, and evaluate the find. Recovered specimens must be curated in a museum repository with permanent retrievable storage (e.g., San Bernardino County Museum). A report shall be submitted to the County of Riverside along with confirmation of the curation of recovered specimens into an accredited museum repository.

MM GEO 1: A licensed geotechnical engineer shall be appointed to the Project to provide a pre-construction meeting between the Project developer, contractor and landowner prior to commencement of initial grading activities. Said geotechnical engineer shall also be appointed on-site to monitor stages of grading operations and report status to the Project developer in order to fulfill compliance with recommendations outlined in the Geotechnical Investigation (2011).

SUMMARY OF MITIGATION MEASURES

MM BIO 1: All native breeding birds, (except game birds) regardless of their listing status, are protected under the Migratory Bird Treaty Act (MBTA). Potential impacts to the breeding birds are considered significant under the California Environmental Quality Act (CEQA). Since nesting birds may occur on site it is important that the Project comply with the MBTA and the California Dept. of Fish and Game (CDFG) Code Regulations 3500 and 3800 which protect nesting birds. In order to comply with these regulations all future clearing, grubbing, tree trimming and tree removals must be conducted outside the bird nesting season. The typical nesting season is often considered February 15th to August 31st.

MM BIO 2: A focused trapping survey shall be conducted prior to Project construction to determine if the LAPM occurs within the project limits or within the immediate area. If it is found that the LAPM is present and take of this species is unavoidable during construction, additional mitigation or minimization may be imposed by the Riverside County Environmental Programs Department.

MM BIO 3: Prior to construction, a 30-day pre-construction burrowing survey shall be conducted to ensure that no burrowing owls are within the grading limits or within 300 feet of construction. If burrowing owls are found within the zone of influence of the project footprint, additional minimization or mitigation may be required.

MM BIO 4: Drainages. If disturbance to Smith Creek is expected during future development, permits and consultation with the state and federal agencies will be required. Part of the consultation with the agencies will require a formal jurisdictional delineation to be prepared.

MM BIO 5: Night Lighting. No work shall be conducted at night to avoid night lighting entering Smith Creek.

MM BIO 6: Invasive Plants. All equipment shall be power washed with a high pressure air hose prior to entering the Project site to ensure no seeds from invasive plants are brought into the Project site.

MM BIO 7: Run-off. Silt-fencing shall be installed along the grading limit to avoid any loose soil, rocks, or mud from entering riparian areas on and adjacent to the site.

MM CR 1: If paleontological resources are encountered during ground disturbance, a paleontological monitor shall be notified to identify, remove, document, and evaluate the find. Recovered specimens must be curated in a museum repository with permanent retrievable storage (e.g., San Bernardino County Museum). A report shall be submitted to the County of Riverside along with confirmation of the curation of recovered specimens into an accredited museum repository.

MM GEO 1: A licensed geotechnical engineer shall be appointed to the Project to provide a pre-construction meeting between the Project developer, contractor and landowner prior to commencement of initial grading activities. Said geotechnical engineer shall also be appointed on-site to monitor stages of grading operations and report status to the Project developer in order to fulfill compliance with recommendations outlined in the Geotechnical Investigation (2011).

RESOURCES

- CalEEMod.2011.1.1 California Emissions Estimator Model. Available at <http://www.caleemod.com/>
Accessed: February 2011 to January 2012.
- Chambers Inc. Cultural Resources Inventory of 12.25 Acres: APN: 543-170-007, 543-160-006, and 543-140-022 Banning, Riverside County, California, prepared for County of Riverside, Department of Facilities Management, April 2007.
- CHJ Inc. Geotechnical Investigation Larry D. Smith Correctional Facility Proposed Housing Unit Expansion 1627 South Hargrave Street Banning Area Riverside County, California, prepared for County of Riverside Facilities Management, April 11, 2007.
- CHJ Inc. Geotechnical Investigation Proposed Smith Creek Bank Stabilization and Protection Larry D. Smith Correction Facility and Rehabilitation Center Banning, California, prepared for RBF Consulting, February 16, 2011.
- City of Banning GP City of Banning General Plan Online. Available at <http://www.ci.banning.ca.us/index.aspx?NID=54> (Accessed May 3, 2011).
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- COR Ordinance No. 847 Riverside, County of, *Ordinance No. 847*, Regulating Noise. (Available at Riverside County Clerk of the Board and at <http://www.clerkoftheboard.co.riverside.ca.us/ords/400/457.pdf> (Accessed on March 10, 2011).)
- County of Riverside Los Angeles Pocket Mouse Focused Survey For Smith Creek Slope Environmental Programs Armoring at The Larry D. Smith Correctional Facility, prepared for Division (EPD) Riverside County Economic Development Agency, May 2012.

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- RBF Consulting *Basis of Design Report for Smith Creek Slope Stabilization at Larry Smith
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Acronyms

BMP	Best Management Practice
CFS	Cubic Feet Per Second
CNDDB	California Natural Diversity Database
CNEL	Community Noise Equivalent Level
CORGP	County of Riverside General Plan
CO ₂ e	Carbon Dioxide equivalent greenhouse gases
CSA	County Service Area
CVAG	Coachella Valley Association of Governments
DEBESP	Determination of Biologically Equivalent or Superior Preservation
EPA	Environmental Protection Agency
EPD	County of Riverside Environmental Programs Division
FPS	Feet per Second
HANS	Habitat Assessment and Negotiation Strategy
HSC	California Health and Safety Code
LAPM	Los Angeles Pocket Mouse
LST	Localized Significance Threshold
MBTA	Migratory Bird Treaty Act
MDAQMD	Mojave Desert Air Quality Management District
MSHCP	Multiple Species Habitat Conservation Plan
NAHC	Native American Heritage Commission
RAFSS	Riverside Alluvial Fan Sage Scrub
RCALUC	Riverside County Airport Land Use Commission
RCA	Regional Conservation Authority
RCAP	Riverside County Agricultural Preserve
RCLIS	Riverside County Land Information System
SCAQMD	South Coast Air Quality Management District
SWPPP	Storm Water Pollution Prevention Plan
VegCAMP	Vegetation Classification and Mapping Program
WRCOG	Western Riverside Council of Governments

List of Appendices Available on CD

**Appendix A
Air Quality and GHG Analysis**

**Appendix B
General Habitat Assessment and MSHCP Compliance Report**

**Appendix C:
Jurisdictional Wetland Resources Report**

**Appendix D
Basis of Design Report**

**Appendix E
Geotechnical Investigation
(2007 and 2011 Reports)**

**Appendix F
Cultural Resources Inventory**

**Appendix G
DEBSP Reports**

**Appendix H
Los Angeles Pocket Mouse Survey Report**