

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 Obligee. 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% or 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



STANDARD FORM OF AGREEMENT BETWEEN
COUNTY AND CONSTRUCTION MANAGER

by and between

TILDEN-COIL CONSTRUCTORS

(the "Construction Manager")

and

THE COUNTY OF RIVERSIDE

(the "County")

FOR:

ROY'S DESERT RESOURCE CENTER REMODEL PROJECT

19531 McLane Street, Palm Springs, CA 92262

INITIALS *DBW*

JAN 30 2018 3.9

Revised: February, 2015

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STANDARD FORM OF AGREEMENT BETWEEN COUNTY AND CONSTRUCTION MANAGER

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PREAMBLE

THIS STANDARD FORM OF AGREEMENT BETWEEN COUNTY AND CONSTRUCTION MANAGER ("Agreement") is entered into as of the date of the last signature on the signature page of this agreement, by and between **THE COUNTY OF RIVERSIDE**, a political subdivision of the State of California ("County") and Tilden-Coil Constructors, a California corporation ("Construction Manager"), for project management services.

RECITALS

A. County is the legal owner of the parcel of property, described more particularly in the Property Description - Exhibit "G" attached hereto, located at the following address or public road or highway intersections: **19531 McLane Street, Palm Springs, CA 92262**.

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

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

D. County intends to construct a 46,893 square foot augmented board and care facility and to expand an adjacent mental health services clinic, ("Project") on the Site, all substantially in accordance with the Contract Documents (as hereinafter defined).

E. County has retained and Holt Architecture, as the Architect for the Project and may retain other or substitute architects during the duration of the Project.

TERMS AND CONDITIONS

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

ARTICLE 1 GENERAL PROVISIONS

1.1 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.1.26 Close-Out Documents. "Close-Out Documents" means all documents (including, without limitation, paper and electronic versions) and other things that are required under the terms of the Contract Documents to be submitted by the Contractor or a Separate Contractor after Final Completion and as a condition of Final Payment to the Contractor or a Separate Contractor, including, without limitation, Record Documents, warranties, guarantees, technical and product information, product samples, operations and maintenance manuals and excess, replacement and attic stock parts and materials.

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

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

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

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

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

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

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

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

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

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

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

1.1.38 Contractor Safety Plan. "Contractor Safety Plan" means an injury and illness prevention plan(s) prepared by Contractor or a Separate Contractor setting forth the safety policies, procedures and forms to be followed and used in connection with performance of the Work.

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

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California.

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

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

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

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

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

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

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

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

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

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

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

1.1.51 Disabled Access Plan. "Disabled Access Plan" means a written plan prepared by the

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Architect in accordance with Disability Laws for access and pathways of travel outside of construction boundaries during construction by persons with disabilities.

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

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

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

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

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

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

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

1.1.59 Final Construction Documents. "Final Construction Documents" means the point at

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

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

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

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

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

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

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

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

1.1.67 Initial Program. "Initial Program" means the County's initial statement, set forth in the Initial Program - Exhibit "D" attached hereto, of its design objectives for the Project.

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

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

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

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

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

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

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

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

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

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

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

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

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

1.1.81 Operations Displacement Plan. "Operations Displacement Plan" means a written plan

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

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

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

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

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

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

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

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

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

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

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

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

1.1.93 Project Documents. "Project Documents" means all writings (including, without limitation, photographs, copies and drafts) of documents, of every kind, prepared by any Project Team

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member and related in any way to the Project or the Development Program, including, without limitation, electronic files and paper copies.

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

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

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

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

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

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

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

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

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

1.1.103 Schematic Design Documents. "Schematic Design Documents" means the schematic Design Documents prepared by Architect and submitted by Architect for approval by County.

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

1.1.105 Site. "Site" means: (1) the parcel of land identified in the Property Description - Exhibit "G" attached hereto and such additional parcels as may be purchased by County for the Project after

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execution of this Agreement; (2) all areas adjacent to such parcels that may be used by Contractor or a Separate Contractor or their Subcontractors for staging, storage, parking or temporary offices; and (3) all land areas, both private and public, adjacent to such parcels on which Work is required to be performed under the Contract Documents, Applicable Laws or permits relating to the Project.

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

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

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

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

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

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

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

1.2 INCORPORATION OF RECITALS

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

1.3 PERFORMANCE STANDARD

1.3.1 Standard of Care. Without limitation to Construction Manager's other obligations under this Agreement, all services performed by Construction Manager and its Sub-consultants in connection with this Agreement shall be performed in a manner consistent with a high standard of care under industry standards and Applicable Laws applying to those who specialize in providing project and construction management services for projects of the type, scope and complexity of the Project.

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

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

1.4 AUTHORITY OF CONSTRUCTION MANAGER

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

1.5 CONSTRUCTION MANAGER'S PERSONNEL

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

1.5.2 Key Personnel.

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

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

.3 Additions, Removals, Replacements.

(1) Additions. It is contemplated that from time to time, as appropriate and necessary to the stage of planning, programming, design, and construction, the need may arise for persons to be added to the Key Personnel List - Exhibit "E" attached hereto to perform the functions of one or more Key Persons. Construction Manager shall anticipate the need for such additions by submitting to County, no later than seven (7) Days prior to the need therefor, a written request for any proposed additions and the reasons therefor. County shall promptly review and respond to the Construction Manager's request, including in such response its reasons for any disapproval. Construction Manager shall neither allow any person who is not a Key Person approved by County to perform the functions of a Key Person nor allow any Key Person approved by County to perform the

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functions of any other Key Person previously approved by County without the advance written approval of County, which approval may be withheld if the County, acting in good faith, objects thereto.

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

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

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

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

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

1.6 SUBCONSULTANTS

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

1.6.2 Approval by County. Construction Manager's request for approval to retain a Sub-consultant shall be submitted in a writing that describes the name of the proposed Sub-consultant and the full contractual terms of the Sub-consultant's proposed retention, including, without limitation, the scope of

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services, total or maximum price and/or hourly rates, terms of reimbursement (including any markups or multipliers) and insurance. A copy of the entire proposed contract to be executed by Construction Manager for the retention of the Sub-consultant shall be provided to County if requested by County. County shall use its best efforts to approve or disapprove of a proposed Sub-consultant within seven (7) Days of Construction Manager's request therefor and receipt by County of information requested by County pursuant to this Paragraph 1.6.2. Basic Services or Additional Services charged by Sub-consultants who have not been approved by, or whose contractual terms of retention have not been submitted to, County pursuant to this Paragraph 1.6.2 will be deemed performed at Construction Manager's Own Expense.

1.6.3 Pre-Approved Sub-consultants. The County has pre-approved the following Sub-consultants:

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

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

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

1.6.5 Supervision. All Basic Services that are within the field of professional practice of a Sub-consultant approved by County and retained by Construction Manager shall be directly performed or supervised by such Sub-consultant. Notwithstanding the foregoing, Construction Manager shall remain solely responsible, as between Construction Manager, on the one hand, and County or any other person or entity to whom County may be liable, on the other hand, for the adequacy of the Sub-consultant's performance and its compliance with the requirements of this Agreement.

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

1.6.7 No County Responsibility. Neither County's approval of the Construction Manager's retention of a Sub-consultant nor County's review or approval of a Sub-consultant's contractual terms of

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retention, even if those terms conflict with this Agreement, shall give rise to any liability or responsibility on the part of County for the acts or omissions of the Sub-consultant, waive any of County's rights, or relieve Construction Manager of any of its obligations under this Agreement. Construction Manager shall remain solely responsible to County, notwithstanding County's approval of any Sub-consultant or its contractual terms of retention, for the quality and performance of all Sub-consultants' services, and for the content, enforceability, and enforcement of all contractual terms relating to all Sub-consultants's performance of services for the Project.

1.7 OWNERSHIP OF DOCUMENTS

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

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

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

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

1.7.5 Use by Construction Manager. Except as otherwise stated in this Paragraph 1.7.5, Construction Manager shall not copy, offer to sell, display, prepare derivative works of, distribute, make, or otherwise commercialize, any of the Project Documents prepared by Construction Manager or its Sub-consultants, or any substantially or confusingly similar likeness thereof, for any purpose, without the prior written consent of County, which consent may be granted or denied in the sole and absolute discretion of County. Notwithstanding the foregoing, nothing herein shall be interpreted as limiting the right of Construction Manager to copy, offer to sell, display, prepare derivative works of, distribute, make, or otherwise commercialize any standard or pre-existing information, including information that is part of the public domain, that is generally known or in use by other construction managers or which was developed or created by Construction Manager or a Sub-consultant prior to or independent of the services performed under this Agreement. County hereby grants to Construction Manager and its Sub-consultants a license during the term of Construction Manager's performance of this Agreement and prior to final payment to Construction Manager, revocable at will by County in the event of a termination of this Agreement, to use and copy the Project Documents prepared by Construction Manager or its Sub-consultants and the designs depicted in or underlying them for the purpose of performing the services

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required under this Agreement.

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

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

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

1.8 APPLICABLE LAWS

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

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

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

1.9 TIME OF ESSENCE

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

1.10 EFFECTIVE DATE

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

1.11 ARCHITECTURAL, ENGINEERING, LEGAL AND CERTIFIED PUBLIC ACCOUNTING SERVICES

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

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**ARTICLE 2
BASIC SERVICES**

2.1 GENERAL PROVISIONS

2.1.1 Basic Services. Basic Services are those services that Construction Manager is required to provide under the terms of this Article 2. Listings of Basic Services in this Agreement by Phase are solely a matter of convenience and shall not be interpreted as limiting the Construction Manager's obligation to perform any Basic Service, as part of any Phase, if such performance is reasonably necessary in order to provide Construction Management of the Project; provided, however, that Construction Manager's Basic Services required for the Post-Completion Phase are limited to those services described in Section 2.7, below. County and Construction Manager have endeavored to describe in this Article 2 the scope of the Basic Services to be provided by Construction Manager; however, such descriptions are not intended to be exhaustive, it being understood that Construction Manager shall be required, without adjustment or addition to any agreed fixed rates or maximum compensation agreed to herein, to provide services, reasonably inferable as being included within the scope of this Agreement **Comprehensive Management Plan**. The Construction Manager shall, with appropriate input from the County, promptly prepare, and thereafter promptly update and maintain as current, a Comprehensive Management Plan summarizing Construction Manager's plan for administering, monitoring, implementing and reporting on matters within the scope of its responsibility under this Agreement, including, without limitation: (1) identification of other Project Team members to be engaged and approximate dates for hiring; (2) summarization of a working plan for the Project Team members (including, without limitation, lines of communication and basic responsibilities for design, cost, schedule and construction); (3) establishment, documentation and implementation of controls for quality assurance in respect to performance by Project Team members in each phase of planning, programming, design, procurement, construction, close-out and post-completion; (4) strategies and recommendations for use, where appropriate, of alternative delivery systems (such as, but not limited to, design-build), multiple bid packaging, phasing, and fast-tracking; (5) procedures that provide for preparation and continuous updating of a schedule of activities of Project Team members with attention to those portions of the Project having schedule priority; (6) procedures for summarization of the financial status of the Project; and (7) procedures for the updating of the Comprehensive Management Plan as necessary to meet changing circumstances.

2.1.2 Comprehensive Management Plan. NOT USED

2.1.3 Development Plan. NOT USED

2.1.4 Project Reports. Project Reports shall be prepared and submitted to the County's designated Project Manager monthly (and more often if circumstances reasonably require), in both paper form and electronically, utilizing a format satisfactory to and approved by County. Project Reports shall keep the County fully informed on matters relating to cost, budget, and schedule, as well as potential problems or other matters that could adversely affect the completion of the Project within the County's time and cost objectives. Without limitation to the foregoing, and subject to the County's right to request such additional information as it judges in its reasonable discretion to be pertinent, Project Reports shall include at a minimum the following: (1) an executive summary; (2) the last 30 Days' highlights and accomplishments; (3) the current status of design and construction; (4) the next 30 Days' projected activities; (5) a detailed status report covering all significant developments in the Project; (6) updated construction costs and schedule information; (7) a safety report; (8) key progress photos of construction; (9) a status report summary of pending and approved Change Orders, Unilateral Change Orders and Construction Change Directives; (10) a status report summary of pending and approved Submittals;

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(11) a status report summary of pending and answered Requests for Information; (12) a status report summary of pending and unresolved claims; (13) a Master Project Schedule and Project Schedule update; and (14) the identification of significant problems impacting cost or schedule and strategies for their resolution.

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

2.1.6 Financial Reporting. NOT USED

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

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

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

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

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

.3 on a monthly basis (and, more frequently if the County or circumstances reasonably require): (1) evaluate time schedules and schedule updates of schedules prepared by other Project Team members retained by County; (2) receive and evaluate requests for time extensions and compensation for Delay received from any Project Team member retained by County; (3) evaluate actual

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progress of such Project Team member's performance relative to its schedule and keep the County fully advised on issues that could affect the Project Team member's meeting the deadlines and milestones set forth in its schedule; and (4) keep Project Team members informed of any upcoming deadlines or milestones relevant to the timing of their performance and provide necessary follow-up to remind Project Team members in advance of deadlines that are critical to maintaining progress of the Project;

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

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

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

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

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

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

2.1.12 Risk Management. NOT USED

2.1.13 Computer Aided Design. Construction Manager represents that it has and will maintain throughout performance of this Agreement the necessary software, and shall at all time have persons on its staff with the expertise, required to receive, review, evaluate and transmit Project Documents that are prepared using AutoCAD electronic media.

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

2.1.15 Construction Means, Methods and Safety. Except in cases where the Construction

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

2.1.16 Rejection of Work.

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

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

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

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

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

2.1.18 Testing and Inspections.

.1 Recommendations. Construction Manager shall recommend in writing for inclusion in the Bidding Documents and Contract Documents any additional special inspection or testing of the Work if, in Construction Manager's or a Sub-consultant's judgment, such inspection or testing is required by Applicable Laws or is necessary or advisable for the performance of the Work.

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

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

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Contractor, or any other person or entity.

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

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

2.2 MOBILIZATION/PROGRAMMING PHASE

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

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

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

2.2.4 Initial Program. NOT USED

2.2.5 Final Program. NOT USED

2.2.6 Site Conditions. NOT USED

2.3 DESIGN PHASE

2.3.1 Construction Documents. Using individuals thoroughly familiar and experienced in reading documents prepared using computer-aided design, Construction Manager shall, exercising the standards of performance set forth in Section 1.3, above, and not the standard care of a design professional nor the acceptance of any design liability, review and evaluate the Construction Documents submitted by the Architect and County Consultants for: (1) compliance with the Master Project Schedule, Project Schedule, Project Construction Budget and prior iterations of Construction Documents that have been approved by County; (2) general correlation of the Construction Documents with the Design Documents prepared by Architect and County Consultants; (3) elimination of interferences that would

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disrupt construction activities; (4) constructability using current construction techniques and taking into consideration the availability of local labor and materials and long lead-time purchases; (5) sufficiency of detail so as to minimize the need for clarifications and changes; and (6) consistency of the overall design with the observed and reported conditions at the Site and in Existing Improvements. Construction Manager shall interface with the Architect and County Consultants for the purpose of coordinating, facilitating and expediting the implementation of recommendations for design revisions requested by County, recommended by County Consultants or required by Governmental Authorities. Construction Manager shall then conduct back checks to confirm that such changes and corrections are incorporated into the Final Construction Documents, Bidding Documents and Contract Documents. Construction Manager is not responsible for providing, nor does Construction Manager control the project design or the contents of the construction documents. By performing the reviews described herein, Construction Manager is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the project design or construction documents. Construction Manager's obligation is to conduct the reviews with the agreed upon level of effort as reflected in Exhibit "N" and as set forth in this section, and provide recommendations to the County. The Architect is not a third party beneficiary of Construction Manager's work described herein and the Architect remains solely responsible for the contents of the design and construction documents.

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

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

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

2.3.5 Permits, Easements, Approvals. Construction Manager shall: (1) identify permits, easements and approvals required of Governmental Authorities; (2) Assist County and Architect in assembling the necessary documents for obtaining permits, easements and Governmental Authority approvals; (3) schedule and monitor the periods of time set aside for obtaining permits, easements and Governmental Authority approvals; (4) report to County any Delays which are observed in obtaining permits, easements, and Government Authority approvals and recommend recovery plans; (5) facilitate the inspection process of Governmental Authorities; (6) as and when requested, attend meetings necessary to secure permits, easements and Governmental Authority approvals; (7) if Construction Manager learns that any required permit or approval that it believes County is obligated to obtain directly has not been obtained, notify County immediately in writing specifying the permit or approval required and the time frame within in which it must be obtained in order to not cause Delay to the Project.

2.3.6 Estimates of Construction Costs. Construction Manager shall prepare detailed Estimates of Construction Costs reflecting the Construction Manager's opinion, based on the then-current version of the Construction Documents prepared by Architect, of the probable Construction Costs that are likely to be incurred by County to construct the Project in accordance with said Construction Documents

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

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

2.3.8 Operations Displacement Plan. NOT USED

2.3.9 Disabled Access Plan. NOT USED

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

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

2.4 BIDDING PHASE

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

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

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

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

2.4.5 Bidding Documents. Construction Manager shall: (1) review all final, approved and stamped Bidding Documents for issuance to Bidders; (2) confirm that they include the Final Construction Documents approved by the County and Governmental Authorities; and (3) review the Construction

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Contract, General Conditions, Specifications and other contractual language proposed by County and other Project Team members for inclusion in the Contract Documents and provide recommendations to County for changes to such language that are appropriate and necessary to meet the particular needs of the Project and that will, to the maximum extent reasonably possible, clearly define requirements and responsibilities of Project Team members.

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

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

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

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

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

2.5 CONSTRUCTION PHASE

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

2.5.2 Payments. Construction Manager shall Manage the processes for receipt, review, approval, disapproval and return (including, without limitation, the processes pertaining to withholding of funds and nullification of prior approval) of Applications for Payment from the Contractor and Separate Contractors as set forth in the Contract Documents, including, without limitation: (1) reviewing Applications for Payment for completeness (including, without limitation, compliance with the cost coding requirements of County) for the purpose of confirming, based on Construction Manager's observations of the Work, that the portions of the Work for which payment is being requested have been performed to the extent represented in the Application for Payment; (2) determining if the types of costs, amounts and terms of stated in the Applications for Payment are in accordance with the Contract Documents; (3) approving all or such portions of the Applications for Payment as Construction Manager recommends for payment and disapproving all or such portions that Construction Manager does not recommend for payment; (4) forwarding each Application for Payment that Construction Manager approves for payment by County, bearing a statement or signature confirming that it is "approved for payment" by Construction Manager; (5) if any portion of an Application for Payment is disapproved by Construction Manager for payment, identifying the portion disapproved and the reasons for such disapproval; (6) following consultation with County, providing timely notice to Contractor and Separate Contractors of any required approval and/or disapproval by Construction Manager or another Project Team member of any portion of

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an Application for Payment in the manner required by Contract Documents; (7) making recommendations, when circumstances warrant, for issuance of joint payments; (8) reviewing for completeness and compliance with the Contract Documents all documentation required by the Contract Documents that is submitted with Applications for Payment, including, without limitation, all releases of stop notice rights (both conditional and unconditional) executed by the Contractor, Separate Contractor and all Subcontractors, of every Tier, including, but not limited to, Subcontractors who have served preliminary lien notices.

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

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

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

2.5.6 Safety. Construction Manager shall: (1) prior to any Work commencing at the Site, review the approved Contractor Safety Plan(s) prepared by the Contractor and Separate Contractors for general compliance with the requirements of the Contract Documents; (2) walk the Site at least once each Day for the purpose of making general observations of the Work, noting any apparent safety violations or unsafe conditions; (3) include in its daily report to County a statement either that no violations of the Contractor Safety Plan(s) or unsafe conditions were observed that Day or if they were observed, a statement identifying those violations or conditions actually observed; and (4) if unsafe conditions or violations of the Contractor Safety Plan(s) are observed, immediately take action to report them to the responsible Project Team member so that action can be taken to correct such violations or conditions and conduct such follow-up as is reasonably necessary to see that such conditions or violations have been corrected. The foregoing responsibilities of the Construction Manager related to safety are undertaken with the understanding that the Contractor and Separate Contractors are primarily responsible for safety at the Site and that the Construction Manager's agreement to perform its obligations under this Paragraph 2.5.6 shall not be interpreted as relieving the Contractor and Separate Contractors of their responsibility under their respective contracts with County for the sufficiency, implementation and enforcement of their respective Contractor Safety Plans.

2.5.7 Utilities Coordination. Construction Manager shall manage all utilities shut downs and start ups in a manner that is consistent with the County's requirements for on-going operations and use of the Site and Existing Improvements during construction. The foregoing responsibilities of the Construction Manager related to utilities are undertaken with the understanding that the Contractor and Separate Contractors are primarily responsible for planning and implementing shut downs of utilities at the Site and that Construction Manager's agreement to perform its obligation under this Paragraph 2.5.7 shall not be interpreted as relieving the Contractor and Separate Contractors of their responsibility under their

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respective contracts with County for providing all notifications to utility providers or Governmental Authorities of utility disconnections or relocations and for performing such disconnections and relocations in accordance with the requirements of the Contract Documents and Applicable Laws.

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

2.5.9 Changes. When Changes in the Work of the Contractor or a Separate Contractor become necessary, Construction Manager shall Manage the process of submittal, review, approval and performance of the Changes as set forth in the Contract Documents, including, without limitation, the following: (1) reviewing, assembling, and evaluating documentation of Changes (including, without limitation, Notices of Change, Change Order Requests, Change Orders, Unilateral Change Orders and Construction Change Directives); (2) verifying (without the necessity of continuous observation of Work) in the field actual labor, time and materials expended; (3) making recommendations to County with respect to the completeness, sufficiency and compliance of such documentation with the requirements of the Contract Documents; (4) forwarding, as required by the Contract Documents, such documentation to the appropriate Project Team member(s) for review; (5) expediting responses by the appropriate Project Team member(s); (6) preparing independent estimates, if requested by County, of the cost and time impact of Changes and requests for Contract Adjustment; (7) scheduling, attending and conducting meetings for review and discussion of unresolved issues; (8) negotiating resolution of disputed Changes and requests for Contract Adjustments with the responsible Contractor or Separate Contractor; (9) substantiating in writing, if requested, Construction Manager's recommendations to County as to the acceptability of the Contractor's and Separate Contractors' cost proposals for Contract Adjustments; (10) upon final approval by County, forwarding completed Change Order, Unilateral Change Order and Construction Change Directive documentation to the appropriate Project Team member for processing; (11) preparing and distributing on a regular basis (no less frequently than monthly) as part of its Project Reports a Change Order, Unilateral Change Order and Construction Change Directive status report listing all approved, pending, disapproved and disputed Change Orders, Unilateral Change Orders and Construction Change Directives by number, brief descriptions of the Change involved and the amount of any requested, pending, approved, disapproved or disputed Contract Adjustments; (12) verifying that any Contract Adjustments of the Contract Time approved by County have been incorporated into the Project Schedule and the Contractor's and Separate Contractors' updated Construction Schedules; and (13) collecting, authenticating (on a daily basis as required) and reviewing for completeness and compliance with the Contract Documents, the time and material information submitted by the Contractor and Separate Contractors of labor, materials, services and equipment furnished to perform Changes.

2.5.10 Submittals. Construction Manager shall Manage the processes for receipt, review, approval and return of Submittals, including, without limitation, the following: (1) receiving the Submittals; (2) reviewing the Submittals, not for technical sufficiency, but to determine if they have been assembled in accordance with the requirements of the Contract Documents; (3) logging the Submittals in the appropriate control log; (4) delivering Submittals to the Architect or appropriate County Consultant for technical review; (5) receiving and logging returned Submittals received from the Architect or County Consultant; (6) confirming that Submittals have been stamped by the reviewing Architect or County Consultant indicating the status of their review and approval; (7) delivering to the Contractor any Submittals returned by the Architect or County Consultant; (8) storing approved physical sample Submittals approved by the Architect or a County Consultant at the Site so that they are available for

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review by Project Team members; (9) reviewing the status of the Submittals in the construction meetings in an effort to expedite processing; (10) reporting on Delays in the processing of Submittals; (11) issuing a reminder to the Architect or County Consultant conducting a review of a Submittal that has been held more than seven (7) Days without a response; (12) evaluating the Submittal Schedules and updated Submittal Schedules prepared by Contractor and Separate Contractors for reasonableness, completeness and compliance with the Contract Documents; and (13) developing recovery plans if the circumstances or timing of the submission or return of a Submittal threatens to cause a Delay to the Contractor's or a Separate Contractor's achieving Substantial Completion or Final Completion within the Contract Time.

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

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

2.5.13 Construction Schedules. Construction Manager shall Manage the processes for receipt, review, evaluation and approval or disapproval of the Construction Schedules and other short-term "look ahead" schedules, and updates thereof, prepared by Contractor and Separate Contractors, including, without limitation, the following: (1) receiving, reviewing, analyzing and advising County on the suitability of such schedules; (2) checking that such schedules are prepared in accordance with the requirements of the Contract Documents and that they are consistent with the terms of the County's contracts with other Project Team members; (3) conducting meetings to facilitate compliance by Contractor and Separate Contractors with the scheduling requirements of the Contract Documents; (4) providing to County, in writing if requested, a written explanation of the basis for the Construction Manager's disapproval of any portion of such schedules that Construction Manager does not approve; (5) reporting to County, in writing if requested, on variances between as-built progress of the Work and the planned progress of the Work as set forth in such schedules; (6) review the contractor's written recovery plans to recapture time lost or to overcome Delays and make recommendations accordingly; (7) recommending necessary actions to County should Contractor or a Separate Contractor fail to make any appropriate or required corrections to such schedules; and (8) reviewing, critically evaluating and making recommendations, in writing if requested, to County regarding, written requests by Contractor and Separate Contractors for time extensions, requests for additional compensation related to Delay and proposals for acceleration to overcome Delay.

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

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

2.5.16 Daily Reports. At the end of each Day that Contractor or a Separate Contractor performs Work on the Site, Construction Manager shall submit (by paper original or, if requested, electronically), separately for the Contractor and each Separate Contractor who performed Work on such

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Day, a daily report to County (on a form provided or approved by County) that includes, at a minimum, the following:

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

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

2.5.18 Observations at Site. Construction Manager shall be present at the Site during the performance of the Work so as to become familiar with the progress and quality of the completed Work, to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents and to guard against Defective Work. The Construction Manager's duty to make observations pursuant to this Paragraph 2.5.18 includes the obligation to make diligent, daily observations, but not necessarily exhaustive observations, of the condition of the Work at the Site.

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

2.5.20 Means, Methods. NOT USED

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

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

2.5.23 Urban Runoff and Storm Water. NOT USED

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

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

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

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

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

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

2.6 CLOSE-OUT PHASE

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

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

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

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

2.6.5 Final Payment. In addition to the Construction Manager's obligations under Paragraph 2.5.2, above, Construction Manager shall Manage the processes for receipt, review and responding to Applications for Payment by Contractor and Separate Contractors requesting Final Payment, including, without limitation, the following: (1) receiving, reviewing and recommending whether payment should be made upon the Application for Payment and recommending any withholding; (2) confirming that all Close-Out Documents required by the Contract Documents have been received by the County; (3) notifying County of any items required for Final Completion that have not been submitted and of what actions Construction Manager is taking, or recommends, to obtain such items; (4) not recommend payment upon Contractor's or a Separate Contractor's Application for Payment until all punch list items necessary to Final Completion have been completed and all documents required to be submitted by Contractor or the Separate Contractor under the Contract Documents and all other actions required to be taken have been received and taken; and (5) if requested by County and after consultation with County, Assisting County in resolving payment disputes between County and Contractor or a Separate Contractor.

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

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

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