

2.7 POST-COMPLETION PHASE

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

2.8 SCHEDULING

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

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

2.8.3 Extensions. A failure by Construction Manager to perform its Basic Services consistent with the Master Project Schedule or Project Schedule approved by County shall not be considered a default of this Agreement to the extent such failure is due to unavoidable and unforeseeable Delays that are beyond Construction Manager's and its Sub-consultants' reasonable control and beyond Construction Manager's responsibility under this Agreement (such as, but not limited to, strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any Governmental Authority to act in a reasonably timely manner, failure by County to timely provide information or approvals or Delays caused by the fault of the Contractor or Separate Contractors), but only if Construction Manager has given written notice to County of the circumstances of such Delay within seven (7) Calendar Days after first learning of the circumstances causing such Delay.

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

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

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

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

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the Construction Manager, on its own behalf and on behalf of its Sub-consultants, for Losses relating to Delay, from any cause whatsoever, are hereby waived.

ARTICLE 3 ADDITIONAL SERVICES

3.1 DEFINITION, AUTHORIZATION

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

3.2 ENUMERATION OF ADDITIONAL SERVICES

Additional Services include and are not limited to the following:

3.2.1 providing services that are outside the scope of services that are required to be performed by Construction Manager as part of Basic Services under this Agreement and/or defined in Construction Manager's Proposal - Exhibit P – Preconstruction Services;

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

3.2.3 providing services, including witness preparation, in connection with a mediation, arbitration, or legal proceeding, except where any party to such proceeding has alleged in good faith the occurrence of: (1) a breach of this Agreement by Construction Manager; or (2) an act or omission of Construction Manager or a Sub-consultant constituting negligence (ordinary or professional), willful misconduct, or a violation of Applicable Laws;

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

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

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

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

3.3 NOTICE OF ADDITIONAL SERVICES

Construction Manager shall notify County in writing within five (5) Days after learning of any circumstance (including, without limitation, any direction or request by County or other Project Team member) that Construction Manager believes may give rise to performance of Additional Services. Except as otherwise

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provided in Section 3.4, below, Construction Manager waives the right to compensation for Additional Services performed without prior written approval by the Board of Supervisors expressly acknowledging that the service is an Additional Service.

3.4 DISPUTES

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

ARTICLE 4 COUNTY RESPONSIBILITIES

4.1 ADMINISTRATION BY COUNTY

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

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

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

4.2 PROJECT INFORMATION

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

4.3 ACCESS TO SITE

Construction Manager shall at all times during performance of this Agreement have access to the Site and to the Work, at whatever stage the Work is in its preparation or progress, to facilitate Construction Manager's performance of its obligations under this Agreement. Employees of Construction Manager and

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its Sub-consultants shall, at all times while present on the Site, comply with the safety requirements applicable to the Project.

**ARTICLE 5
CONSTRUCTION MANAGER'S COMPENSATION**

5.1 BASIC SERVICES COMPENSATION

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

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

.1 a Fixed Basic Services Fee for all Basic Services of **\$1,918,199**, as further broken down in Payment Schedule – Exhibit J attached hereto;

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

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

Basic Services Description: Basic Services Fees:

(1) Construction Management Staffing:

Not to Exceed Fee: \$ 0

Maximum Hourly Fee: \$(see Exhibit C);

(2) CM Sub-consultants

Fixed Basic Services Fee: \$0

Maximum Hourly Fee: \$(see Exhibit C)

(3) CM Services Allowance:

Not to Exceed Allowance: \$0

Maximum Hourly Fee: \$ (see Exhibit C);

(4) Reimbursable Costs:

Not to Exceed Reimbursable Costs: \$0

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

5.2 REIMBURSABLE EXPENSES

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

.1 if approved in advance by County, mileage for vehicle travel (at the rates set forth in the Reimbursable Expenses Schedule - Exhibit "H" attached hereto), air travel (coach fare only) and related subsistence (meals and lodging at standard business accommodation rates) for travel from Construction Manager's or a Sub-consultant's place of business (whether located within or outside the County of Riverside) to a point of destination outside the County or Riverside, but excluding the following: (1) travel and related subsistence to or from the County's offices or the Site for purposes of conducting inspections, observations or attending meetings that are part of Basic Services; (2) travel to and from residences to the Construction Manager's or a Sub-consultant's place of business; and (3) travel to or from Construction Manager's or a Sub-consultant's place of business located outside the County of Riverside to a location within the County of Riverside;

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

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

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

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

5.2.3 Mark Ups. Neither the Construction Manager nor any Sub-consultant shall include or

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charge any markup or multiplier upon any Reimbursable Expense, save and except for such markups or multipliers as may be permitted, if at all, by the terms of the Reimbursable Expenses Schedule - Exhibit "H" attached hereto.

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

5.3 ADDITIONAL SERVICES COMPENSATION

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

5.3.2 Additional Services Fees.

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

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

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

5.4 HOURLY RATES

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

5.5 RELEASE FOR PRIOR SERVICES

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

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5.6 DISPUTES

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

5.7 NO WAIVER OR RELEASE OF RIGHTS

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

ARTICLE 6 PAYMENTS TO CONSTRUCTION MANAGER

6.1 INVOICES FOR PAYMENT

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

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

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

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

.2 Hourly/Not-to-Exceed: If the Additional Services Fees are based on an hourly compensation, by taking the number of hours of Additional Services performed during the thirty (30) Day

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period covered by the Invoice for Payment and multiplying those hours times the applicable Hourly Rates for the personnel involved in providing such Additional Service; provided, however, that if the parties have agreed to a not-to-exceed amount for such Additional Services Fees, then under no circumstances shall the total of the amounts paid and payable by County for such Additional Services Fees at any time exceed a pro-rated share of the agreed not-to-exceed amount for such Additional Services based on County's Good Faith Determination of the percentage of such Additional Services properly completed in accordance with this Agreement multiplied times the agreed not-to-exceed amount.

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

6.2 PAYMENT SCHEDULE FOR BASIC SERVICES

The County's obligation for payment of Basic Services Fees for any Phase of Basic Services shall under no circumstances exceed a pro-rated share of either the lump sum amount or Maximum Hourly Fee, as applicable, that County is obligated to pay for Basic Services Fees under Section 5.1, above. Such pro-rated share shall be calculated based on the percentages assigned to each Phase of Basic Services in the Payment Schedule - Exhibit "J" attached hereto. In cases where only a portion of a Phase is completed, the amount payable shall not exceed County's Good Faith Determination of the percentage of Basic Services completed within that Phase expressed as a separate percentage of the percentage of Basic Services allocated in the Payment Schedule to that Phase.

6.3 ACCOMPANYING DOCUMENTATION

Each Invoice for Payment shall be accompanied by the following:

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

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

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

6.3.4 unconditional waivers and releases of stop notice and bond rights executed by Construction Manager and its Sub-consultants, of every Tier, using the Release Forms - Exhibit "K" attached hereto unconditionally releasing to the fullest extent allowable by Applicable Laws all stop notice

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and bond rights for all services performed and costs incurred during the period of time covered by the Invoice for Payment immediately preceding the current, pending Invoice for Payment; and

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

6.4 REVIEW AND PAYMENT

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

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

6.5 PAYMENT DISPUTES

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

6.6 WITHHOLDING BY COUNTY

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

6.7 LIENS, STOP NOTICES, CLAIMS

Except as otherwise provided herein, Construction Manager shall not permit to be created or to remain undischarged any lien, encumbrance, stop notice, claim or charge (collectively, "lien") which arises out of,

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

ARTICLE 7 RECORDS AND FILES

7.1 FINANCIAL MANAGEMENT

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

7.2 RECORD KEEPING

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

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

7.3 INSPECTION, PRODUCTION AND AUDITING

Construction Manager shall allow County and the auditor for the State of California (and their respective

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

7.4 NONCOMPLIANCE BY CONSTRUCTION MANAGER

7.4.1 Cost of Audit. If an inspection or audit pursuant to Section 7.3, above, discloses that any amount (other than amounts permitted under the terms of this Agreement to be charged by Construction Manager as lump or fixed fee charges) cannot be verified due to a failure by Construction Manager or any Sub-consultant to comply with this Article 7, has been improperly, inaccurately or excessively charged to County by Construction Manager or any Sub-consultant or has been overpaid by County, and if the total of such amounts for any calendar year audited is five percent (5%) or more of the total amount (exclusive of amounts permitted under the terms of this Agreement to be charged by Construction Manager as lump or fixed fee charges) invoiced to County during such year, then Construction Manager shall pay, at Construction Manager's Own Expense, 100% of the actual cost to County and/or the State of California of such inspection or audit and any resulting report. If such inspection, audit or report is by County using in-house staff, then such actual cost to County shall be computed on the basis of two (2) times the direct payroll of the staff completing such inspection, audit or report.

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

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

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

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7.5 SUBCONSULTANTS

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

ARTICLE 8 DEFAULT, TERMINATION, SUSPENSION

8.1 TERMINATION BY COUNTY FOR CAUSE

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

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

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

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

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

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

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

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

.2 provide to County a description, in writing, no later than seven (7) Work Days after receipt of the notice of termination, of all contracts with Sub-consultants that are outstanding, including, without limitation, with respect to each such contract separately, the terms of the original price, payments made to date, the balance owing, the status of the services performed and any outstanding withholding of funds or default, and a copy of the contract and any written changes, amendments or modifications thereto, together with such other information as County may determine necessary in order to decide whether it is in County's best interests to accept assignment of, or request Construction Manager to terminate, the contract; and

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

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

8.1.7 Payment to Construction Manager.

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

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

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

8.2 TERMINATION WITHOUT CAUSE

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

8.2.2 Payment to Construction Manager.

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

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

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

8.3 SUSPENSION BY COUNTY

County shall have the right to order, in writing, a suspension of performance of all services by Construction Manager without cause and for County's convenience. If services are entirely suspended by written order of County for a continuous period of more than sixty (60) consecutive Days, and such suspension is not due to a breach of this Agreement by Construction Manager or the negligence, willful misconduct or violation of an Applicable Law by Construction Manager or a Sub-consultant, and if County thereafter requests in writing that Construction Manager resume performance following such suspension,

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then Construction Manager shall be entitled to payment as additional compensation of any unavoidable direct, out-of-pocket costs payable by Construction Manager or Sub-consultants to third-party vendors of supplies as a result of such suspension. No other adjustment to Construction Manager's compensation and no other recovery by Construction Manager or any Sub-consultant of Losses associated with such suspension shall be permitted.

8.4 TERMINATION BY CONSTRUCTION MANAGER

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

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

ARTICLE 9 INDEMNIFICATION

9.1 INDEMNIFICATION BY CONSTRUCTION MANAGER

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

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

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

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

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

**ARTICLE 10
INSURANCE**

10.1 CONSTRUCTION MANAGER'S INSURANCE

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

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

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

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

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entire Project. Coverage for such post-completion period may be provided by renewal or replacement of the policy for each of five (5) years or by a five-year extended reporting period endorsement that reinstates the aggregate limit for the extended reporting period. Renewal or replacement policies shall not allow for any advancement of the retroactive date. Any deductible or self-insured retention under the foregoing professional liability policy shall not, except with the approval of County granted or withheld in the County's sole and absolute discretion, exceed \$100,000. The Fixed Limit for the Project is twenty-three million, five hundred twenty-one thousand, one hundred and sixty-seven dollars (\$23,521,167).

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

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

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

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

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

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

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

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

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

ARTICLE 11 DISPUTE RESOLUTION

11.1 RESOLUTION OF DISPUTES

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

11.2 GOOD FAITH DETERMINATIONS

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

11.3 ATTORNEY'S FEES

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

ARTICLE 12 ROYALTIES, PATENTS, COPYRIGHTS AND TRADE SECRETS

12.1 ROYALTIES

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

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12.2 INFRINGEMENT

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

12.3 NOTICE BY CONSTRUCTION MANAGER

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

ARTICLE 13 MISCELLANEOUS

13.1 GOVERNING LAW

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

13.2 HAZARDOUS SUBSTANCES

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

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

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

13.3 NO WAIVER

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

13.4 NO THIRD-PARTY RIGHTS

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

13.5 EXTENT OF AGREEMENT

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

13.6 SUCCESSORS AND ASSIGNS

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

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13.7 CONFIDENTIALITY

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

13.8 INDEPENDENT CONTRACTOR

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

13.9 CONSTRUCTION MANAGER'S REPRESENTATIONS

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

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13.10 SURVIVAL

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

13.11 SEVERABILITY

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

13.12 INTERPRETATION

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

13.13 ADVERTISING

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

13.14 ELECTRONIC DOCUMENTS

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

13.15 COUNTERPARTS

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

13.16 TITLES FOR CONVENIENCE

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

13.17 NONDISCRIMINATION

Construction Manager shall comply, and cause its Sub-consultants, of every Tier, to comply, with all requirements of Applicable Laws pertaining to equal opportunity employment and nondiscrimination, including, without limitation, those requirements prohibiting discrimination against or segregation of any person or group of persons on account of age, ancestry or national origin, color, creed, disability, gender, marital status, race, religion or sexual orientation, nor shall Construction Manager permit any, such

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practice prohibited by such requirements to take place in connection with the selection, location or number of consultants or vendors employed. Construction Manager shall include the provisions of this Section 13.18 in all contracts entered into with Sub-consultants for performance of services provided for under this Agreement.

13.18 SERVICES PERFORMED BY CONSTRUCTION MANAGER OR AFFILIATES

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

13.19 REBATES, KICKBACKS

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

ARTICLE 14 NOTICES

14.1 DELIVERY AND ADDRESSES

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

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

INITIALS *RB CW*

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

To County at:

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

With additional copies to:

County of Riverside Economic Development Agency
3403 10th Street, 4th Floor
Riverside, CA 92501
Attention: Sergio Pena, Deputy Director of Design & Construction

To Construction Manager at:

Tilden-Coil Constructors
3612 Mission Inn Avenue
Riverside, CA 92501
Attention: Construction Manager-Marty Greenwood

With additional copies to:

Tilden-Coil Constructors
3612 Mission Inn Avenue
Riverside, CA 92501
Attention: Dayne Brassard, Executive Vice-President

14.2 CHANGE OF ADDRESS

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

**ARTICLE 15
EXHIBITS**

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

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

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- Exhibit "H" - Reimbursable Expenses Schedule
- Exhibit "I" - Invoice for Payment Form
- Exhibit "J" - Payment Schedule
- Exhibit "K" - Release Forms
- Exhibit "L" - Additional Insureds List
- Exhibit "M" - Sub-consultant Insurance Requirements
- Exhibit "N" - Construction Manager's Staffing Fee Schedule
- Exhibit "O" - Construction Manager's Sub-consultant Services
- Exhibit "P" - Construction Manager's Proposal

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

IN WITNESS WHEREOF, the parties hereto have made and executed three (3) originals of this Construction Contract, on _____ [to be filled in by Clerk of the Board].

[SIGNATURES ON FOLLOWING PAGE]

INITIALS *DB CW*

"COUNTY"

COUNTY OF RIVERSIDE

By: Chuck Washington Dated JAN 30 2018

~~JOHN TAVAGLIONE~~ Chuck Washington
PRINTED NAME
Chairman, Board of Supervisors

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By: Kezia Harper-Ihem Dated JAN 30 2018
Deputy

(SEAL)

APPROVED AS TO FORM:

GREGORY P. PRIAMOS
County Counsel

By: Synthia M. Gunzel Dated 12-15-17
Marsha L. Victor
Principal Deputy County Counsel

SYNTHIA M. GUNZEL

"CONSTRUCTION MANAGER"

Tilden-Coil Constructors
[Signature]
(SIGN ON LINE ABOVE)

By: Dayne Brassard
PRINTED NAME

Title: Executive Vice-President

The following information must be provided concerning the Construction Manager:

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

If "other", enter legal form of business:

Enter address:
3612 Mission Inn Avenue
Riverside, CA 92501

Telephone: 951-684-5901
Facsimile: 951-684-0725
Email: dbrassard@tilden-coil.com

Employer State
Tax ID #: 15495179

State Contractor License #: 208556

DIR Registration #: 1000000518

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

If Construction Manager is a corporation, state:
Name of President: Brian Jaramillo
Name of Secretary: Greg Lackey
State of Incorporation: California

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EXHIBIT "A"
DESCRIPTION OF DEVELOPMENT PLAN

Not Used

EXHIBIT "B"

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

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

(LONG FORM)

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

(LONG FORM)

ARTICLE 1
GENERAL PROVISIONS

1.1 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.1 that are the result of

(1) Differing Site Conditions,

(2) amendments or additions to Applicable Laws, which amendments or additions are enacted after the Bid Closing Deadline,

(3) a Change requested by County in accordance with the conditions of authorization applicable to Compensable Changes set forth in Article 7, below, or

(4) other circumstances involving a Change in the Work for which Contractor is given under the Contract Documents a specific and express right to a Contract Adjustment to the Contract Price;

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

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

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

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

.1 that is the result of

(a) a Compensable Change,

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

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

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

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

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

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

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

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

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

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

.1 Construction Contract;

.2 Addenda;

.3 General Conditions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 CORRELATION, INTERPRETATION AND INTENT OF CONTRACT DOCUMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.3 Addenda;

.4 Construction Contract;

.5 Supplementary Conditions;

.6 General Conditions;

.7 General Requirements;

.8 Specifications;

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

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

.11 Reference Documents.

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

1.3 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

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

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

1.3.3 **Contractor's Warranty.** Contractor represents and warrants that the Project Documents and Design Documents prepared by Contractor or any Subcontractor for use on the Project, and the use of such Project Documents in the ordinary course, are free of any claim of infringement or any other violation of any Intellectual Property Right or other right of any third party.

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

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

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

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

ARTICLE 2 COUNTY RIGHTS AND OBLIGATIONS

2.1 INFORMATION, APPROVALS AND SERVICES REQUIRED OF COUNTY

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

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

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

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

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

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

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

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

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

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

2.2 COUNTY'S RIGHT TO STOP THE WORK

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

2.3 COUNTY'S RIGHT TO CARRY OUT THE WORK

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

2.4 ACCOUNTING, RECORDS AND AUDIT

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

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

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

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

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

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

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

2.5 COUNTY FURNISHED MATERIALS

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

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

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

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

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

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

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

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

2.6 COUNTY INSTALLED ITEMS

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

2.7 COUNTY'S ADDITIONAL RIGHTS

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

ARTICLE 3 CONTRACTOR PERFORMANCE

3.1 CONTRACTOR STATUS

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

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

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

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

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

3.2 REVIEW OF DOCUMENTS, SITE AND EXISTING IMPROVEMENTS

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

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

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

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

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

3.2.2 Contract Adjustments.

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

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

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

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

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

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

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

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

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

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

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

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

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

3.2.3 WAIVER BY CONTRACTOR.

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

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

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

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

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

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

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

3.2.5 Requests for Information.

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

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

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

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

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

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

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

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

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

.7 WAIVER BY CONTRACTOR.

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

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

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

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

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

3.4 LABOR, MATERIALS AND EQUIPMENT

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

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

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

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

3.4.5 Materials, Equipment

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

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

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

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

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

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

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

3.5 CONTRACTOR'S WARRANTY

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

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

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

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

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

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

3.6 TAXES

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

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

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

3.7 PERMITS, FEES AND LEGAL NOTICES

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

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

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

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

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

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

3.8 CONTRACTOR'S PERSONNEL

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

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

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

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

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

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

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

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

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

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

3.9 CONTRACTOR'S CONSTRUCTION SCHEDULE

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

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

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

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

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

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

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

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

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

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

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

3.10 DOCUMENTS AT SITE, REPORTING, MEETINGS

3.10.1 Documents at Site

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

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

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

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

3.10.2 Daily Reports.

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

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

(1) Labor - The names of the workers, and for each such worker his/her classification and hours worked.

(2) Material - A list of the different materials used and for each different material the quantity used.

(3) Equipment - The type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.

(4) Inspection and Testing Activities – A list of inspections performed by name of inspector and testing company and the type of inspection, items of the Work involved and a description of the outcome of such inspection or test.

(5) Visitors, Guests, Dignitaries – A list of visitors and guests by name, title, company and purpose of visit.

(6) Areas of the Work – A statement of the areas of the Site on which the Work was performed and a detailed description of the stage, status and progress of the Work in each such area at the beginning and end of the Day.

(7) Accidents, Delays, Defective Work – A description in detail of any injuries to the workers, accidents or delays that occurred or Defective Work that was encountered.

(8) Other Services and Expenditures – A description of other services and expenditures in such detail as County may require.

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

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

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

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

3.11 SUBMITTALS

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

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

3.11.3 Submission by Contractor.

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

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

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

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

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

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

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

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

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

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

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

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

3.12 USE OF SITE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.13 CUTTING AND PATCHING

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

3.14 UTILITIES AND SANITARY FACILITIES

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

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

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

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

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

3.15 CLEANING UP

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

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

3.16 ACCESS TO THE WORK

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

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

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

3.17 INTELLECTUAL PROPERTY RIGHTS

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

3.18 INDEMNIFICATION

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

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

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

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

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

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

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

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

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

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

3.19 LABOR, WAGES, PAYROLL RECORDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.19.12 Penalties for Violations.

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

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

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

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

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

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

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

3.20 LABOR CODE §2810

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

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

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

3.21 URBAN RUNOFF AND STORM WATER COMPLIANCE

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

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

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

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

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

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

3.22 SOLID WASTE MANAGEMENT

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

3.23 CEQA COMPLIANCE

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

3.24 AQMD COMPLIANCE

Contractor is responsible for full and complete compliance with, as applicable: (1) AQMD Rule 403.1, County Ordinance 742, the County MOU with AQMD dated January 6, 2004 Agenda Item 3.1 (for projects in the Coachella Valley); or (2) AQMD Rule 403 (for projects west of the Coachella Valley). Any fines imposed by AQMD on the County, as well as any other Loss to County, as a result of non-compliance by Contractor with the applicable provisions of the foregoing requirements are the responsibility of Contractor and upon request by County will be paid to County by Contractor or may be withheld by County from amounts due to Contractor under its Applications for Payment.

**ARTICLE 4
CONSTRUCTION ADMINISTRATION**

4.1 ARCHITECT

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

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

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

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

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

4.2 ADMINISTRATION OF THE CONSTRUCTION CONTRACT

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

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

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

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

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

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

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

4.3 CLAIMS

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

4.3.2 Arising of Claim.

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

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

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

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

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

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

(i) the facts alleged in or that form the basis for the Claim are true and accurate;

(ii) I do not know of any facts or circumstances, not alleged in the Claim, that by reason of their not being alleged render any fact or statement alleged in the Claim materially misleading;

(iii) I have, with respect to any request for money or damages alleged in or that forms the basis for the Claim, reviewed the job cost records (including those maintained by Contractor and by any Subcontractor, of any Tier, that is asserting all or any portion of the Claim) and confirmed with reasonable certainty that the losses or damages alleged to have been suffered by Contractor and/or such Subcontractor were in fact suffered in the amounts and for the reasons alleged in the Claim;

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

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

Signature: _____

Name: _____

Title: _____

Company: _____

Date: _____

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

4.3.5 **Submission of Claims.**

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

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

4.3.6 **Response to Claims by Contractor.**

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

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

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

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

4.3.8 Claims Based on Differing Site Conditions.

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

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

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

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

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

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

.7 WAIVER BY CONTRACTOR.

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

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

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

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

4.4 ATTORNEY'S FEES

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

4.5 NOTICE OF THIRD-PARTY CLAIMS

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

4.6 WAIVERS OF RIGHTS BY CONTRACTOR

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

4.7 GOOD FAITH DETERMINATIONS

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

4.8 ESCROW BID DOCUMENTS

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

ARTICLE 5 SUBCONTRACTORS

5.1 SUBSTITUTION

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

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

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

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

5.2 SUBCONTRACTUAL RELATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

5.4 COMMUNICATIONS BY COUNTY

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

5.5 DOCUMENT AVAILABILITY

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

5.6 NO LIABILITY OF COUNTY

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

ARTICLE 6 COUNTY'S OWN FORCES AND SEPARATE CONTRACTORS

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

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

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

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

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

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

6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

6.3 ALLOCATION OF CLEANUP COSTS

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

ARTICLE 7 CHANGES IN THE WORK

7.1 CHANGES

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

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

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

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

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

7.2 SIGNATURES AND AUTHORIZATIONS

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

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

7.2.3 Authorization.

.1 Compensable Changes.

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

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

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

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

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

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

7.3 CHANGE ORDERS

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

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

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

7.4 UNILATERAL CHANGE ORDERS

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

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

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

7.4.4 WAIVER BY CONTRACTOR.

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

7.5 CONSTRUCTION CHANGE DIRECTIVES

7.5.1 Purpose. The purpose of a Construction Change Directive is to: (1) direct the performance of a Change that does not involve a Contract Adjustment; (2) establish a mutually agreed basis for compensation to Contractor for a Compensable Change under circumstances where performance of the Compensable Change needs to proceed in advance of the County performing a full evaluation of the Contractor's rights relative to a Contract Adjustment; or (3) direct performance of Work or a Change with respect to which there exists a dispute or question regarding the terms of a Contract Adjustment.

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

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

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

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

(2) Legal Effect.

(a) **Upon Contractor.**

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

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

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

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

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

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

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

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

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

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

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

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

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

7.6 PROCEDURES

7.6.1 Notice of Change.

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

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

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

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

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

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

.4 WAIVER BY CONTRACTOR.