

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



ITEM: 3.25  
(ID # 17309)

**MEETING DATE:**

Tuesday, November 16, 2021

**FROM :** FACILITIES MANAGEMENT:

**SUBJECT:** FACILITIES MANAGEMENT (FM): United States Bankruptcy Court Lease Agreement Finishes Replacement Project - Approve the First Amendment to the Professional Services Agreement for Architectural Services with Tate Snyder Kimsey, Inc., District 2. [Total Cost \$25,000, 100% Lease Payments from General Services Administration (Previously approved budget)]

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

1. Approve the attached First Amendment to the Professional Services Agreement for Architectural Services between the County of Riverside (County) and Tate Snyder Kimsey, Inc. (TSK Architects) of Los Angeles, California, in the amount of \$25,000, for the United States Bankruptcy Court Lease Agreement Finishes Replacement (US Bankruptcy Court Lease) Project; and
2. Authorize the Director of Facilities Management, or her designee, to administer the amendment to TSK Architects in accordance with applicable Board policies.

**ACTION:Policy, CIP**

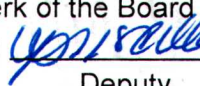
  
Rose Salgado, Director of Facilities Management 11/1/2021

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**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Jeffries, seconded by Supervisor Perez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt  
Nays: None  
Absent: None  
Date: November 16, 2021  
xc: FM

Kecia R. Harper  
Clerk of the Board  
By:   
Deputy

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

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 25,000	\$ 0	\$ 25,000	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b> Lease Payments from General Services Administration – 100% (Previously approved budget)			<b>Budget Adjustment:</b> No	
			<b>For Fiscal Year:</b> 2021/22	

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

**BACKGROUND:**

**Summary**

On March 17, 2020, Item 3.7, the Board of Supervisors (Board) approved in-principle and a project budget of \$3,397,101 for the US Bankruptcy Court Lease Project. In the same Board action, the Board approved the professional services agreement for architectural services between the County and TSK Architects in the amount of \$141,220, plus a reimbursable allowance of \$2,000. During the Project, TSK Architects provided additional design and construction administration services outside the original scope of professional services to meet the needs of the GSA and US Bankruptcy Court.

Facilities Management (FM) recommends the Board approve the First Amendment to compensate TSK Architects for the additional services in the not-to-exceed amount of \$25,000, for a revised contract value of \$166,220. The project is currently under construction nearing completion, as originally scheduled, is projected to be completed significantly under the approved budget.

**Impact on Residents and Businesses**

Maintaining a functional and aesthetically appealing courthouse retains the valuable partnership with the federal government and provides significant economic benefits to Riverside County and local community by maintaining a long-term lease and valuable workforce and salaries which in turn provides for local tax revenue and supports local ancillary business and services.

**Additional Fiscal Information**

(Commences on Page 3)



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

**Additional Fiscal Information**

All costs associated with this Board action were previously approved on March 17, 2020 (Item 3.7) in the amount of \$3,397,101 and are 100% funded by Lease Payments from GSA. The First Amendment for TSK Architects in the amount of \$25,000 is accounted for within the approved project budget, therefore an adjustment to the project budget is not required with this Board action. Monies will be expended in FY 2021/22.

Attachment:

- First Amendment to the Professional Services Agreement for Architectural Services with Tate Snyder Kimsey, Inc.

RS:SP:RB:ES;mg                      FM08720009814                      MT Item# 17309  
G:\Project Management Office\FORM 11'S\FORM 11's\_In Process\17309\_D4 - 009814 - USBK Crt Lease Agmt Rplc Proj - First Amend with TSK\_111621.doc

  
\_\_\_\_\_  
Gregory F. Priamos, Director County Counsel                      11/3/2021





1 IN WITNESS HEREOF, the parties hereto have caused their duly authorized representatives to execute  
2 this First Amendment.

3  
4 "COUNTY"

5 COUNTY OF RIVERSIDE

6  
7 By: Karen S. Spiegel  
8 KAREN SPIEGEL

9 Chair

10 NOV 16 2021

11 Board of Supervisors

12 ATTEST:

13 KECIA R. HARPER

14 Clerk of the Board

15 By: Jonisella Raso

16 Deputy

17  
18 (SEAL)

19  
20  
21 APPROVED AS TO FORM:

22 GREGORY P. PRIAMOS

23 County Counsel

24 By: K. Bell Valdez  
25 K. Bell Valdez

26 Deputy County Counsel

CONSULTANT:

Tate Snyder Kimsey, Inc.

By: J. Windom Kimsey

James Windom Kimsey

Title: CEO, Secretary, CFO

Address: 316 W. 2<sup>nd</sup> Street, Penthouse

Los Angeles, CA 90012

For Reference: PSA w/TSK.

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



**ITEM: 3.7  
(ID # 9411)**

**MEETING DATE:**  
Tuesday, March 17, 2020

**FROM: FACILITIES MANAGEMENT:**

**SUBJECT: FACILITIES MANAGEMENT(FM):** United States Bankruptcy Court Lease Agreement Finishes Replacement Project - California Environmental Quality Act Exempt, Approval of In-Principle, Project Budget, and Approval of Professional Services Agreement for Architectural Services with Tate Snyder Kimsey, Inc., District 2. [\$3,397,101 - Lease Payments from General Services Administration - 100%]

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

1. Approve the United States Bankruptcy Court Lease Agreement Finishes Replacement (US Bankruptcy Court Lease) Project for inclusion in the Capital Improvement Program (CIP);
2. Find that the US Bankruptcy Court Lease Project is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15301, Class 1 Existing Facilities Exemption and Section 15061 (b)(3) "Common Sense" Exemption;

Continued on Page 2

**ACTION: Policy, CIP**


  
Rose Salgado, Interim Director of Facilities Management 2/18/2020

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**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Jeffries, seconded by Supervisor Perez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

**Ayes:** Jeffries, Spiegel, Washington, Perez and Hewitt  
**Nays:** None  
**Absent:** None  
**Date:** March 17, 2020  
**xc:** FM

Kecia R. Harper  
Clerk of the Board  
By:   
Deputy



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

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

3. Approve in-principle the US Bankruptcy Court Lease Project located at 3420 12<sup>th</sup> Street in Riverside; for lease agreement replacement of paint, wall coverings, and flooring;
4. Approve a project budget in the amount not to exceed of \$3,397,101 for the Project;
5. Authorize use of Lease Payments from General Services Administration (GSA) not to exceed \$3,397,101, including reimbursement to Facilities Management (FM) for incurred project related expenses;
6. Approve the attached Professional Services Agreement for Architectural Services between the County of Riverside (County) and Tate Snyder Kimsey, Inc. (TSK Architects) of Los Angeles, California, in the amount not to exceed of \$141,220, plus a reimbursable allowance of \$2,000, and authorize the Chairman of the Board to execute the agreement on behalf of the County;
7. Authorize the Director of Facilities Management to administer the Professional Services Agreement with TSK Architects in accordance with applicable Board policies;
8. Delegate project management authority for the Project to the Director of Facilities Management in accordance with applicable Board policies, including the authority to utilize consultants on the approved pre-qualified list for services in connection with the Project, and within the approved project budget; and
9. Authorize the Purchasing Agent to execute pre-qualified consultant service agreements not to exceed \$100,000 per pre-qualified consultant, per fiscal year, in accordance with applicable Board policies for this project, and the sum of all project contracts shall not exceed \$3,397,101.

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$200,000	\$2,500,000	\$3,397,101	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b> Lease Payments from General Services Administration – 100%			<b>Budget Adjustment:</b> No	
			<b>For Fiscal Year:</b> 2019/20-2021/22	

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

**BACKGROUND:**

Summary



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

On April 18, 2017, Item 3-27, the Board of Supervisors (Board) approved the Revenue Lease Agreement (Lease) between the County and General Services Administration (GSA). The Lease covers 75,527 square feet of the building with a lease commencement date of March 14, 2017 and terminating on March 13, 2037. Lease Section 6.12, Maintenance of Provided Finishes, stipulates that the County shall maintain in a like new condition all paint, wall coverings, carpet and flooring; repaint common areas every three (3) years; and perform cyclical repainting and flooring replacement every five (5) years of occupancy including furniture disassembly and reassembly.

The Project will be performed on nights and/or weekends, therefore contractors with GSA security clearances will benefit the Project alleviating the need for security escorts. Based on negotiations with GSA, the improvements (new flooring, painting and moving of furniture) are currently limited to approximately 54,000 square feet of the building.

On August 27, 2019, Item 3.13, the Board approved a pre-qualified list of architectural and engineering firms to be retained on an as-needed bases. Due to their experience, FM selected TSK Architects of Los Angeles from the pre-qualified list to provide plans and specifications for bidding of the Project.

FM recommends the Board approve the US Bankruptcy Court Lease Project, the project budget in the not to exceed amount of \$3,397,101 and the Professional Services Agreement with TSK Architects to begin the development and design phase of the Project. FM will pursue the most cost-effective project delivery method and award in accordance with applicable Board policies.

Pursuant to CEQA, the US Bankruptcy Court Lease Project was reviewed and determined to be categorically exempt under State CEQA Guidelines Section 15301 Class I Existing Facilities Exemption; and Section 15061(b)(3), General Rule or "Common Sense" Exemption. The Project, as proposed, is limited to minor repairs, interior alterations and improvements to an existing County-owned facility, including painting, carpet, wallcovering, window treatments, and minor touchups. The improvements will not alter the function of the facility or increase the intensity of use. With certainty, there is no possibility that the activity in question may have a significant effect on the environment because it merely involves minor repairs and alterations to an existing facility to provide necessary upgrades to allow for better use and functioning of the property. A Notice of Exemption will be filed by FM staff with the County Clerk within five days of Board approval.

**Impact on Residents and Businesses**

Maintaining a functional and aesthetically appealing courthouse retains the valuable partnership with the federal government and provides significant economic benefits to Riverside County and local community by maintaining a long-term lease and valuable workforce and salaries which in turn provides for local tax revenue and supports local ancillary business and services.



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

**Additional Fiscal Information**

The approximate allocation of the project budget is as follows:

<b>PROJECT BUDGET LINE ITEMS</b>	<b>CATEGORY</b>	<b>PROJECT BUDGET AMOUNT</b>
Architectural Design	1	143,220
Construction Management	2	0
Construction Contract	3	2,160,000
Offsite Construction	4	0
Project Management	5	108,432
Fixtures, Furnishings, Equipment	6	0
Other Soft Costs/Specialty Consultants	7	125,822
Project Contingency	8	308,827
Minor Construction	9	550,800
<b>Project Budget</b>		<b>\$3,397,101</b>


All costs associated with this Board action are 100% funded with Lease Payments from GSA. Expenditures for FY 2019/20 are estimated at \$200,000; expenditures for FY 2020/21 are estimated at \$2,500,000; and expenditures for FY 2021/22 are estimated at \$697,101.

Attachment:

- Professional Services Agreement with Tate Snyder Kimsey, Inc.

RF:HM:VC:SP:RM:ES:mg                      FM08720009814                      9411-13981  
S:\Project Management Office\FORM 11'S\FORM 11's\_In Process\9411 - 13981\_D3 - 009814 - USBK Crt Lease Agmt Rplc Proj - PSA with TSK Architects and Proj Bdgt\_031720.doc

  
Teresa Summers, Director of Purchasing                      5/14/2019

  
Steven Atkeson                      3/3/2020

  
Gregory L. Priamos, Director County Counsel                      2/27/2020



**STANDARD FORM OF PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
COUNTY AND ARCHITECT**

by and between

Tate Snyder Kimsey, Inc.

(the "Architect")

and

**THE COUNTY OF RIVERSIDE**

(the "County")

FOR:

**U.S. BANKRUPTCY COURT LEASE AGREEMENT REPLACEMENT PROJECT**

**3420 12<sup>TH</sup> STREET, RIVERSIDE, CA 92501**



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# VMP

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# STANDARD FORM OF PROFESSIONAL SERVICES AGREEMENT BETWEEN COUNTY AND ARCHITECT

## PREAMBLE

THIS STANDARD FORM OF PROFESSIONAL SERVICES AGREEMENT BETWEEN COUNTY AND ARCHITECT ("Agreement") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between THE COUNTY OF RIVERSIDE, a political subdivision of the State of California ("County") and Tate Snyder Kimsey, Inc., a corporation, ("Architect"), for professional services.

## RECITALS

A. County is the legal owner of the parcel of property, described more particularly in the Property Description - Exhibit "A" attached hereto, located at the following address or public road or highway intersections: 3420 12th Street, Riverside, CA 92501.

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

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

## TERMS AND CONDITIONS

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

### ARTICLE 1 GENERAL PROVISIONS

#### 1.1 DEFINITIONS

Capitalized terms (and, if otherwise stated in this Section 1.1, non-capitalized terms) used in this Agreement shall have the meanings assigned to them in this Section 1.1. If not defined in this Section, they shall have the meanings assigned to them in the General Conditions of the Standard Form of Construction Contract Between County and Contractor - Exhibit "K" attached hereto. If not defined in this Agreement or the General Conditions, they shall have the meanings reasonably understood to apply to them by the context in which they are used. If a term is defined both in this Section 1.1 and the General Conditions and the definitions are not identical, the definition set forth in this Section 1.1 shall, unless otherwise stated in this Agreement, govern for purposes of interpreting Architect's obligations under this Agreement. Terms that are phrased in the singular shall be deemed to include the plural, and vice versa, where appropriate to their context.

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

**1.1.2 Additional Insured.** "Additional Insured" means each of the Indemnitees and other

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persons or entities that, under the terms of this Agreement and its exhibits, the Architect or its Subconsultants are required to name as an additional insured under their policies of insurance.

**1.1.3 Additional Services.** "Additional Services" means the services described or referenced in Article 3 of this Agreement.

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

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

**1.1.6 Agreement.** "Agreement" means this Standard Form of Professional Services Agreement Between County and Architect.

**1.1.7 Applicable Laws.** "Applicable Laws" means all statutes, ordinances, regulations, policies and guidelines (including, without limitation, Environmental Laws and Disability Laws) enacted by Governmental Authorities, codes adopted or promulgated by Governmental Authorities (including, without limitation, building and health and safety codes), lawful orders of Governmental Authorities and common law, including, but not limited to, principles of equity applied by the courts, which are in effect at the time the services or other obligations that are required under or in connection with the performance of this Agreement are performed; provided, however, that the term Applicable Laws when used in this Agreement to refer to the Architect's obligation to comply with Applicable Laws is intended to be limited to those laws, statutes, ordinances, policies, guidelines, regulations, codes, orders and principles that are relevant and applicable to the scope of services that are required of Architect or the Subconsultants under this Agreement.

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

**1.1.9 Architect.** "Architect" means the person or entity identified as "Architect" in the preamble to this Agreement.

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

**1.1.11 Architect's Project Schedule.** "Architect's Project Schedule" means a detailed schedule prepared by Architect depicting Architect's proposed time plan for performance of this Agreement, as adjusted for extensions of time permitted by this Agreement.

**1.1.12 Architect's Representative.** "Architect's Representative" means the individual acting on behalf of Architect as its representative with the authority set forth in Paragraph 1.5.3 of this Agreement.

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

**1.1.14 Basic Services.** "Basic Services" means the services required by Article 2 of this Agreement to be performed by Architect or described elsewhere in this Agreement or its exhibits as services that are part of Basic Services, including, without limitation, those services marked by a "yes" designation



in the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto.

**1.1.15 Basic Services Allowance.** "Basic Services Allowance" means a dollar amount reserved in the Basic Services Compensation for performance of Basic Services with respect to which the County and Architect have agreed, in lieu of a Fixed Fee or Maximum Hourly Fee, to a budgeted amount that is not guaranteed by Architect and that may, with prior approval by County, be exceeded by Architect.

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

**1.1.17 Basic Services Fees.** "Basic Services Fees" means those fees for services, as distinguished from reimbursement of costs, that are payable to Architect under this Agreement as part of the Basic Services Compensation, which may be in the form of a Fixed Fee, a Maximum Hourly Fee or a Basic Services Allowance.

**1.1.18 Bidding Phase.** "Bidding Phase" means the Phase of Architect's Basic Services described in Paragraph 2.1.6 of the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto.

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

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

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

**1.1.22 Conflicting Interpretations.** "Conflicting Interpretations" means an express and specific interpretation by a Governmental Authority, or an official thereof acting in his or her official capacity, of a requirement of an Applicable Law as applied to a specific and discrete portion of the Design Documents or a Submittal and that either (1) conflicts with an interpretation of the same Applicable Law by Architect that is made in accordance with the standard of care set forth in Section 1.3, below, or (2) is consistent with an interpretation of the same Applicable Law by Architect that is made in accordance with the standard of care set forth in Section 1.3, below, but conflicts with an interpretation of the same Applicable Law by another Governmental Authority or an official of the same or a different Governmental Authority acting in his or her official capacity. For purposes of this definition, issuance by a Governmental Authority of a general approval or permitting does not constitute an express and specific interpretation by an official of a Governmental Authority and shall not be considered sufficient to form the basis for a Conflicting Interpretation.

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

**1.1.24 Construction Costs.** "Construction Costs" means the total costs, whether estimated or actual, to construct those elements of the Project designed or specified by Architect or its Subconsultants,



inclusive of overhead and profit to the Contractor and Separate Contractors performing the Work, but exclusive of the following: (1) reserves established for use by County; (2) the fees and costs of professional services of Architect, Subconsultants or County Consultants; (3) land acquisition costs; (4) finance costs; (5) County's administrative costs; and (6) legal fees and costs.

**1.1.25 Construction Documents.** "Construction Documents" means progressive and final versions of those Design Documents delineated in Description of Basic, Additional and Excluded Services - Exhibit "B" and Construction Document Deliverables – Exhibit "O" attached hereto that are required to be provided by Architect as part of Basic Services performed during the Design Development Phase or Final Construction Documents Phase.

**1.1.26 Construction Phase.** "Construction Phase" means the Phase of Architect's Basic Services described in Paragraph 2.1.7 of the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto.

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

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

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

**1.1.30 County Consultant.** "County Consultant" means a professional, of any Tier, retained by County to provide professional services, other than those provided by Architect or its Subconsultants, including, without limitation, those County Consultants listed in the Subconsultants and County Consultants List – Exhibit "F" attached hereto.

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

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

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

**1.1.34 Design Coordination Standards.** "Design Coordination Standards" means the following standards for coordination that must be met in the preparation of Design Documents submitted by Architect to County: (1) proper coordination and relationship among the Design Elements; (b) proper coordination between the Design Elements and the reasonably foreseeable requirements for utilization of the Site during construction by County, Contractor and Separate Contractors; (c) proper coordination among the Design Elements, the conditions at the Site, and Existing Improvements that are reasonably observable or that are disclosed by information reasonably accessible to Architect; and (d) a system of references and cross-



references that is thorough, accurate, and consistent.

**1.1.35 Design Development Documents.** "Design Development Documents" means the progressive iterations of the Construction Documents developed by the Architect and the Subconsultants as part of the Design Development Phase.

**1.1.36 Design Development Phase.** "Design Development Phase" means the Phase of Architect's Basic Services described in Paragraph 2.1.4 of the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto.

**1.1.37 Design Documents.** "Design Documents" means all originals, copies and drafts (whether paper or electronic) of plans, drawings, tracings, specifications, programs, reports, calculations, presentation materials, samples, models and other material containing designs, specifications, engineering or other information prepared by Architect or its Subconsultants for the Project, including all building and other design contained therein.

**1.1.38 Design Elements.** "Design Elements" means engineered and non-engineered designs, narratives, backgrounds, area plans, floor plans, details, sections, elevations, material and equipment schedules, products, quantities, dimensions, measurements, points of reference, sizes, capacities, performance characteristics, industry, professional and manufacturer standards, general and specific notes and legends.

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

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

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

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



seq.]; the Occupational Safety and Health Act [29 U.S.C.A. §§ 655 and 657]; the Residential Lead-Based Paint Exposure Act (Title X of the Housing and Community Development Act of 1992) [15 U.S.C.A. §§ 2681 et seq.]; the Lead-Based Paint Poisoning Prevention Act [42 U.S.C.A. §§4821 et seq.], the Federal Endangered Species Act, the California Endangered Species Act, the Migratory Bird Treaty Act, the National Environmental Policy Act, the California Environmental Quality Act, Porter Cologne Water Quality Act (California Water Code §§ 13000 et seq), and all similar federal, state or local laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements.

**1.1.43 Estimate of Construction Costs.** "Estimate of Construction Costs" means a written estimate of the reasonable, anticipated Construction Costs for construction of the Project as depicted or described in the Design Documents prepared by Architect and its Subconsultants.

**1.1.44 Excluded Services.** "Excluded Services" means those design and engineering services so designated and listed in the Description of Basic, Additional and Excluded Services – Exhibit "B" attached hereto, that are excluded from the scope of Basic Services, and which shall be performed only if, when and on such terms as may be hereafter mutually agreed in writing between the County and the Architect.

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

**1.1.46 Final Construction Documents.** "Final Construction Documents" means the final version of the Construction Documents at the point that: (1) they are sufficiently detailed so as to be capable of definitive and final pricing with a minimum of further clarifications or detailing by Architect or the Subconsultants; and (2) all corrections to the Construction Documents required by County or by Governmental Authorities for permitting or approval have been completed and the Construction Documents have been unconditionally approved for use in construction by the County and Governmental Authorities.

**1.1.47 Final Construction Documents Phase.** "Final Construction Documents Phase" means the Phase of Architect's Basic Services described in Paragraph 2.1.5 of the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto.

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

**1.1.49 Fixed Fee.** "Fixed Fee" means an agreed, fixed and lump sum amount for Basic Services Fees or Additional Services Fees for all or an agreed portion of Basic Services or Additional Services, where such Basic Services Fees or Additional Services Fees compensation is based on a lump sum, fixed fee amount, rather than Maximum Hourly Fee.

**1.1.50 Fixed Limit.** "Fixed Limit" means the dollar amount set forth in Paragraph 2.3.1, below.

**1.1.51 Formal Project Meeting.** "Formal Project Meeting" means (1) a face-to-face meeting, other than a meeting with Governmental Authorities, community organizations or bidders for Construction Contracts, (2) requested by County or Architect in advance of its occurrence; (3) attended by a representative of County and Architect; and (4) at which the Architect, unless excused by County, is continuously present for at least one hour.

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



attached hereto.

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

**1.1.54 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 and any other local, regional, state or federal political subdivision, authority, agency, department, commission, board, bureau, court, judicial or quasi-judicial body, and any legislative or quasi-legislative body, or instrumentality of any of them, which has jurisdiction over the Project, Work or Site, including, without limitation, any such authority having jurisdiction to review and approve or reject the Design Documents or the Work based on compliance or non-compliance with Applicable Laws.

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

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

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

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

**1.1.59 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.

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

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

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

**1.1.63 Loss, Losses.** "Loss" and "Losses" mean any and all economic and non-economic losses,

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costs, liabilities, claims, damages, actions, judgments, settlements and expenses, including, without limitation, full and actual attorney's fees (including, without limitation, attorney's fees for trial and on appeal), expert and non-expert witness fees, arbitrator and arbitration fees and mediator and mediation fees.

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

**1.1.65 Maximum Hourly Fee.** "Maximum Hourly Fee" means the agreed, not-to-exceed amount applicable to Basic Services Fees or Additional Services Fees for all or an agreed portion of Basic Services or Additional Services, where such Basic Services Fees or Additional Services Fees compensation is based on an hourly compensation not to exceed an agreed maximum, rather than a Fixed Fee.

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

**1.1.67 Notice of Completion.** "Notice of Completion" means a "notice of completion" as defined in California Civil Code § 8182.

**1.1.68 Payment Schedule.** "Payment Schedule" means the Payment Schedule - Exhibit "I" attached hereto that allocates by percentage the total or maximum amount of compensation that County agrees to pay to Architect as Basic Services Compensation for each Phase of Basic Services.

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

**1.1.70 Phase.** "Phase" means a phase of Basic Services set forth in the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto.

**1.1.71 Planning/Programming Phase.** "Planning/Programming Phase" means the Phase of Architect's Basic Services described in Paragraph 2.1.2 of the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto.

**1.1.72 Plans.** "Plans" means the graphic and pictorial portions of the Design Documents 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".

**1.1.73 Post-Completion Phase.** "Post-Completion Phase" means the Phase of Architect's Basic Services described in Paragraph 2.1.8 of the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto.

**1.1.74 Program.** "Program" means the Initial Program or Final Program and any revisions thereto authorized in writing by County.

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



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

**1.1.77 Proprietary Information.** "Proprietary Information" means the confidential information described in Section 12.7, below.

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

**1.1.79 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.

**1.1.80 Reference Documents.** "Reference Documents" means the documents listed in Reference Documents List - Exhibit "J" attached hereto, consisting of those reports, studies, surveys and other information provided by County for Architect's review and consideration in preparing the Design Documents.

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

**1.1.82 Restrictive Specifications.** "Restrictive Specifications" means a portion of the Design Documents prepared by Architect or a Subconsultant that is restricted as to brand, trade name or manufacturer in the manner defined in Paragraph 2.4.5, below.

**1.1.83 Schematic Design Documents.** "Schematic Design Documents" means the Design Documents prepared by Architect and submitted by Architect for approval by County as part of the Architect's performance during the Schematic Design Phase.

**1.1.84 Schematic Design Phase.** "Schematic Design Phase" means the Phase of Architect's Basic Services described in Paragraph 2.1.3 of the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto.

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

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

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



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

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

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

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

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

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

## 1.2 INCORPORATION OF RECITALS

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

## 1.3 PERFORMANCE STANDARD

Without limitation to the Architect's other express and implied obligations under this Agreement, all services performed in connection with this Agreement shall be performed in a manner consistent with the professional standard of care applicable to those who provide services of the type called for by this Agreement for projects of a scope and complexity that is comparable to the Project.

## 1.4 AUTHORITY OF ARCHITECT

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

## 1.5 ARCHITECT'S PERSONNEL

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





### 1.5.2 Key Personnel.

.1 **Of Essence.** The furnishing of services by Key Persons is of the essence to this Agreement.

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

### .3 Additions, Removals, Replacements.

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

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

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

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

**1.5.3 Architect's Representative.** The Architect's Representative is **Kevin Quan**. The Architect's Representative is deemed to be a Key Person. The Architect's Representative has the authority to act on behalf of Architect in respect to all matters that are the subject of this Agreement, including, without limitation, the power and authority to contractually bind Architect to agreements and modifications of agreements. The Architect's Representative shall be qualified and authorized to make interpretations of





the Design Documents and Contract Documents and shall be available at all times during all Phases to consult with County on matters pertinent to the Project.

**1.5.4 Sole Responsibility.** All persons employed by Architect shall be the employees of Architect and not of County. Architect and its Subconsultants each shall be solely responsible for any workers' compensation obligations, withholding taxes, unemployment insurance and any other employer obligations with respect to their respective employees.

## 1.6 SUBCONSULTANTS

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

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

**1.6.3 Pre-Approval.** County has pre-approved the Subconsultants listed in Subconsultants and County Consultants List - Exhibit "F" attached hereto. Such pre-approval shall be deemed to be approval by County in accordance with Paragraph 1.6.2, above.

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

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

**1.6.6 Termination.** Architect may, upon advance written notice to County, terminate and replace the services of any County-approved Subconsultant, subject in all cases to the prior written approval of



County, which approval shall not be unreasonably withheld, conditioned or delayed.

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

## 1.7 OWNERSHIP OF DOCUMENTS

**1.7.1 Property of County.** Subject to the provisions of this Section 1.7, all Design Documents, including any designs, building designs or other depictions underlying or shown in them, shall be deemed the sole and exclusive property of County and ownership thereof is irrevocably vested in County, whether the Project is constructed or not.

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

**1.7.3 County Use.** Without limitation to the other provisions of this Section 1.7, County shall have the right to use the Design Documents for: (1) the construction, use, occupancy or maintenance of the Project, including, without limitation, future additions, alterations, corrections or repairs to the Project; and (2) for the design, construction, use, occupancy or maintenance of any future building projects by County; provided, however, that if the County uses the Design Documents for any of the purposes set forth in Clause (2) of this Paragraph 1.7.3, then County will, without limitation to its other obligations set forth in Paragraph 1.7.8, below, indemnify and hold harmless Architect and its Subconsultants as set forth in Clause (3) of Paragraph 1.7.8, below.

**1.7.4 No Infringement.** Architect represents and warrants that the Design Documents, whether prepared by Architect or a Subconsultant, and the use of the Design Documents in the ordinary course are free of any claim of infringement or any other violation of any Intellectual Property Right or other right of any third party.

**1.7.5 Distribution.** Except as otherwise stated in this Paragraph 1.7.5, Architect shall not copy, offer to sell, display, prepare derivative works of, distribute, make, or otherwise commercialize, any of the Design Documents, or any substantially or confusingly similar likeness thereof, for any purpose, without the prior written consent of County, which consent may be granted or denied in the sole and absolute discretion of County. Notwithstanding the foregoing, nothing herein shall be interpreted as limiting the right of Architect to copy, offer to sell, display, prepare derivative works of, distribute, make, or otherwise commercialize any standard or pre-existing details or designs, including details or designs that are part of the public domain, that are generally known or in use by other design professionals or which were developed or created by Architect or a Subconsultant prior to or independent of the services performed under this Agreement. County hereby grants to Architect and its Subconsultants a license during the term of Architect's performance of this Agreement and prior to final payment to Architect, revocable at will by

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# VMP



County in the event of a termination of this Agreement, to use and copy the Design Documents and the designs depicted in or underlying them for the purpose of performing the services required under this Agreement.

**1.7.6 Inspection.** County shall have the right at any time or times, upon prior written request by County, to review the status and condition of the Design Documents while in development or during construction and to request that copies thereof be provided to County.

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

**1.7.8 Indemnification.** County shall indemnify and hold harmless Architect and its Subconsultants against Loss resulting from: (1) the use of the Design Documents by County in a manner not permitted by Paragraph 1.7.3, above; (2) a modification by or at the request of County of the Design Documents, without the prior written consent of the Architect (in the case of Design Documents prepared by Architect) or the Subconsultant responsible for preparation of the Design Documents (in the case of Design Documents prepared by a Subconsultant); or (3) the use of the Design Documents by County in the manner permitted by Clause (3) of Paragraph 1.7.3, above.

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

## 1.8 APPLICABLE LAWS

**1.8.1 Compliance by Architect.** Subject to the other provisions and limitations of this Section 1.8 and without intending to limit Architect's right to Additional Services Compensation pursuant to Article 3, below, for changes in Applicable Laws, Architect shall, at all times in its performance under this Agreement, comply with Applicable Laws. Subject to the provisions of Paragraph 1.8.4, below, Architect shall not be relieved from its obligation under this Paragraph 1.8.1 by the errors or oversights by Governmental Authorities in their issuance of general approvals or permitting of Design Documents for the Project.

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

**1.8.3 Disability Laws.** The Architect's duty with respect to conforming its Design Documents to Disability Laws shall be limited to the application and incorporation of the technical requirements of either or both (as applicable by the terms of the Disability Laws) the Americans With Disabilities Act (ADA) and the Fair Housing Administrations Act (FHAA), as well as the technical requirements of other Disability Laws. The County acknowledges and agrees that such technical requirements may be subject to different interpretations, legal or otherwise, and that the Architect cannot, and does not, guaranty or warrant compliance with all interpretations of Disability Law requirements; provided, however, that the Architect remains at all times obligated to interpret applicable technical requirements of Disability Laws exercising the standard of professional care set forth in Section 1.3, above.

**1.8.4 Conflicts in Interpretations.** Nothing stated in this Agreement shall be interpreted as creating or implying any responsibility or liability on the part of Architect for a Conflicting Interpretation of



an Applicable Law.

**1.8.5 Legal Notices.** Architect shall provide such legal notices or certifications as may be required by Applicable Laws to be provided by architects providing design services for comparable projects, including, without limitation, notice that Work is being, or is about to be, carried out at the Site, information concerning the identity of the Contractor and Separate Contractors and other required information concerning the condition or performance of the Work. Copies thereof shall be submitted to County for review and approval prior to their being distributed, posted or published.

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

## 1.9 TIME OF ESSENCE

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

## ARTICLE 2 BASIC SERVICES

### 2.1 BASIC SERVICES, ADDITIONAL SERVICES, EXCLUDED SERVICES

**2.1.1 Basic Services.** Architect's Basic Services consist of the professional design and engineering services, whether provided by Architect or its Subconsultants, described in this Article 2, including, without limitation, those specific Basic Services listed and checked "Yes" in the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto, as well as any other services, within the scope of Architect's or its Subconsultants' fields of professional practice, that are reasonably inferable as being necessary, or that are customarily furnished by other providers of professional services of the type and nature provided for in this Agreement, to accomplish the Basic Services expressly required by this Agreement. Basic Services do not include Additional Services or Excluded Services.

**2.1.2 Additional Services.** Additional Services are those services so defined as Additional Services in Article 3, below. Additional Services shall be performed only if authorized in writing by County in the manner required by Article 3, below.

**2.1.3 Excluded Services.** Excluded Services are services so designated as "Excluded Services" in the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto. Excluded Services shall be not be performed by Architect unless mutually agreed upon between County and Architect.

**2.1.4 Phases.** References in this Agreement or its exhibits to performance of Basic Services during a particular Phase is for convenience only and not as a limitation, with the understanding that Basic Services described in this Agreement as being part of a particular Phase shall be performed by Architect as and whenever reasonable and necessary for the proper and complete design of the Project.

### 2.2 PROGRAM

**2.2.1 Initial Program.** Architect shall, as part of its Basic Services performed during the Planning/Programming Phase, review and revise the Initial Program as necessary to meet the County's expressed criteria and requirements for the Project.

*[Handwritten initials]*



**2.2.2 Final Program.** A Final Program shall be approved by County in writing upon completion of the Planning/Programming Phase. Architect shall thereafter proceed to complete the design of the Project in accordance with the Final Program.

**2.2.3 Changes.** Subject to Architect's rights to Additional Services Compensation for Additional Services authorized in accordance with Article 3, below, County reserves the right, exercised in its sole and absolute discretion, to modify the Initial Program and Final Program at any time. No other changes to the Initial Program or Final Program are permitted.

**2.2.4 Notice.** If Architect learns of any circumstances (including, without limitation, any directive or instruction by County or any other Project Team member) which involve, or if implemented may result in, a deviation from the Final Program, it shall promptly, prior to performance of any services or further services related thereto, notify the County in writing and request approval of such deviation. Such written notice shall include a statement of the impact that such deviation, if approved and implemented, would have upon the Architect's Project Schedule and the Fixed Limit and an estimate of the cost to County of any related Additional Services Compensation permitted under Article 3, below. Upon written approval by County, Architect shall proceed to revise the Design Documents to conform to such approved deviations. Deviations from the Final Program are the sole responsibility of the Architect and any services required by Architect or its Subconsultants to modify the Design Documents as a result thereof shall be performed at the Architect's Own Expense, unless the Architect has specifically informed the County in writing of such deviation and the County has given specific written approval thereof in accordance with this Paragraph 2.2.4.

**2.2.5 Integrated Design.** The requirements of the Final Program shall be deemed to include the requirement that Architect and its Subconsultants adopt an integrated approach to the design of the Project that makes optimal use of opportunities for the synergies of different design elements into an integrated whole that is energy efficient and economical to construct, maintain and operate.

## 2.3 FIXED LIMIT

**2.3.1 Fixed Limit Amount.** The Fixed Limit for the Project is Three Million, Two Hundred Ninety-Eight Thousand, Two Hundred Sixty Dollars (\$3,298,260). The Fixed Limit shall not be reduced except upon mutual agreement of County and Architect. The County shall have the right, exercised in its sole and absolute discretion, to increase the Fixed Limit at any time or for any reason.

**2.3.2 Architect's Obligation.** It is the obligation of the Architect and its Subconsultants to design the Project for a total sum of Construction Costs that does not exceed the Fixed Limit by more than ten percent (10%) of the Fixed Limit as adjusted in accordance with Paragraph 2.3.4, below.

**2.3.3 Review of Estimates.** Architect shall carefully review any Estimates of Construction Costs provided to it by County or a County Consultant and exercising the standard of care set forth in Section 1.3, above, advise County if any portions thereof that are excessive, inadequate or otherwise irregular. Architect shall provide such information as County or County Consultants may reasonably require in order to assist them in preparing or revising such Estimates of Construction Costs.

**2.3.4 Fixed Limit Adjustments.** The Architect is not responsible for, and the Fixed Limit shall be increased on account of, any of the following:

.1 an adjustment to the Fixed Limit provided for by Paragraph 2.3.8, below, due to County's rejection of a non-programmatic design revision recommended by Architect;

.2 a change to the Final Program approved by County that is requested in writing by County and that materially increases the Construction Costs for the Project;



.3 a change to the Design Documents that is ordered or approved in writing by County after the start of construction and that is not the result of information in the Design Documents that constitutes an error, omission, deficiency, conflict or violation of Applicable Laws or that is the result of the negligence, willful misconduct or violation of an Applicable Law by Architect or a Subconsultant or a breach of this Agreement by Architect; or

.4 demonstrated and quantifiable escalations in costs of construction materials and/or labor as reported by the Engineering News Record or other recognized industry publication on construction prices, for construction costs in the classification area that includes the County of Riverside, or if more than one classification area includes the County of Riverside that classification area that is most precisely reflective of the prices in the County of Riverside; subject to the further conditions that an adjustment to the Fixed Limit pursuant to this Subparagraph 2.3.4.4 for escalation shall only be permitted: (1) if bids for construction have not been opened by County within three (3) months after approval by County of the Final Construction Documents and (2) such escalation adjustment shall be limited to the escalation that occurs during the period of time starting with the expiration of such 3-month period and ending when bids for the Project are actually opened by the County.

**2.3.5 Notice of Overruns.** In addition to and without limitation upon the Architect's obligations under Paragraph 2.3.6, below, Architect shall, exercising the standard of care set forth in Section 1.3, above, advise County within five (5) Days of learning of any circumstances indicating that Construction Costs for the Project are reasonably likely to exceed the Fixed Limit.

**2.3.6 Redesign Services.** Without limitation to Architect's obligation under Paragraph 2.3.2, above, if at any time the Fixed Limit as adjusted in accordance with Paragraph 2.3.4, above, is exceeded by more than ten percent (10%) of such adjusted Fixed Limit by either: (1) the sum of the Construction Costs to construct the Project that are set forth in an Estimate of Construction Costs prepared by Architect, a Subconsultant or a County Consultant; or (2) the "lowest responsive bid" obtained by the County from a responsible contractor pursuant to a competitive bidding process, then Architect shall, if so directed by County in writing, propose and, if further directed by County in writing, implement revisions to the Design Documents (including, without limitation, multiple redesign alternatives) for the purpose of reducing the sum of Construction Costs to an amount that is within the sum of the Fixed Limit as adjusted in accordance with Paragraph 2.3.4, above, plus ten percent (10%) of such adjusted Fixed Limit. The Architect shall clearly identify, in writing, at the time its redesign recommendations are submitted whether its recommendations are consistent or inconsistent with the Final Program. Nothing stated in this Paragraph 2.3.6 or elsewhere in this Agreement shall be interpreted as obligating County to accept, or to pay additional compensation to Architect for, any redesign recommendation, or any redesign services to implement a redesign recommendation, that is inconsistent with the Final Program.

**2.3.7 Architect's Own Expense.** Services by Architect or a Subconsultant to redesign pursuant to Paragraph 2.3.6, above, shall be performed at Architect's Own Expense.

**2.3.8 Non-Programmatic Revisions.** The Fixed Limit shall be adjusted in accordance with Paragraph 2.3.4, above, if and to the extent that the total of the Construction Costs for the Project exceeds such Fixed Limit by more than ten percent (10%) of such Fixed Limit due to the County's refusal or failure to accept a redesign recommendation that is consistent with the Final Program and that is submitted by Architect in accordance with the requirements of Paragraph 2.3.6, above. The amount of such adjustment to the Fixed Limit shall be based on the reasonable, estimated reduction in Construction Costs that would have been achieved if the County had accepted the Architect's recommendation.

**2.3.9 Basic Services.** All services required to be performed by Architect or its Subconsultants in compliance with the Architect's obligations under this Section 2.3 shall be furnished as part of Basic Services.



**2.3.10 Continuous Performance.** In the event of a dispute over the amount of total Construction Costs estimated or incurred to construct the Project as designed by Architect and its Subconsultants, Architect shall, without interruption or delay to its Basic Services and without waiving Architect's right to an appropriate adjustment to the Fixed Limit, perform as directed by County.

**2.3.11 No Limitation.** Nothing stated herein shall be interpreted as a limitation on any of County's rights or remedies that may exist under Applicable Laws, including, without limitation, the right to terminate this Agreement for default (with or without extending to Architect the opportunity to redesign) in the event of a failure by Architect to perform any of its obligations under this Section 2.3.

## **2.4 DESIGN DOCUMENT SUBMISSIONS**

**2.4.1 Submission to County.** Architect shall make such formal submittals of Design Documents to County as and when required by the terms of the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto. All submissions by Architect of Drawings or Specifications for review by County shall be accompanied by a transmittal listing the issuance and revision dates of each document submitted, including, without limitation, a complete list by sheet numbers of all Drawings comprising the submission and a comprehensive narrative explaining all significant changes and additions made since the last formal submission of Drawings to County. All such submissions shall be in multiple sets and such format as required in the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto. Electronic versions shall be submitted using AutoCAD, Adobe Acrobat or other software satisfactory to County.

**2.4.2 County Approval.** County shall promptly approve or disapprove, with explanation of the reasons for disapproval, of all formal submittals of Design Documents that are required by the terms of the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto. County's review is not for the purpose of discovering errors, omissions, conflicts, lack of coordination, ambiguities or violations of Applicable Laws in the Design Documents. Architect shall, notwithstanding any review or approval of Design Documents by the County, remain solely responsible for the content, completeness, accuracy and sufficiency of all Design Documents prepared by Architect or its Subconsultants and, except for deviations approved by County in accordance with Paragraph 2.2.4, above, for their compliance with the Final Program and Fixed Limit.

**2.4.3 Governmental Authorities.** Unless otherwise directed in writing by County, submission of Design Documents to Governmental Authorities for their review or approval shall be sufficiently complete at the time of submission so as to require either no, or only minimal and minor, corrections and supplementation.

**2.4.4 Corrections.** Services and related costs required to make corrections that are the result of information in the Design Documents constituting errors, omissions, conflicts, lack of coordination or violations of Applicable Laws shall under no circumstances constitute grounds for Additional Services Compensation. Moreover, if the Basic Services Compensation is based upon hourly rates and if such corrections are, in the reasonable opinion of County, excessive then any services and associated costs and expenses to make those corrections that are so judged by County to be excessive shall be performed and incurred at the Architect's Own Expense. All corrections shall be incorporated into the next Design Documents submission and highlighted by notation or clouding or if not incorporated then such submission shall be accompanied by a written statement to County, not in the form of notes or clouding on the Design Documents, explaining why such corrections were not incorporated.

**2.4.5 Restrictive Specifications.** Architect shall not, without the prior written approval of County, include or permit there to be included a Restrictive Specification in the Design Documents. For purposes of this Paragraph 2.4.5, a Restrictive Specification is any portion of the Design Documents that: (1) expressly or impliedly calls for the supply, furnishing or installation of any material, product, equipment,





or other thing by a single producer of a particular brand, trade name, or manufacturer to the exclusion of other producers; (2) does not expressly permit the submission for consideration and possible approval by County in accordance with the requirements of California Public Contract Code §3400 of other "or equal" materials, products, equipment or things produced under or by another brand, trade name or manufacturer; or (3) fails to list a brand, trade name or manufacturer that is known to Architect or its Subconsultants to be a brand, trade name or manufacturer that produces a material, product, equipment, or other thing in California that is equal to the material, product, equipment or other thing specified in the Design Documents.

**2.4.6 Legal Review.** Architect understands and acknowledges that County has developed standard forms of legal terms and conditions governing bidding and performance of the Work. Unless approved in writing by County, Architect shall not include provisions in its Final Construction Documents that modify or conflict with the terms of the County's standard forms. In order to assist Architect in this regard, Architect shall, if it wishes County to review its Design Documents for such possible modifications or conflicts, submit drafts to the County requesting the County's legal review. Such submission shall afford the County at least thirty (30) Days to perform such review without causing Delay to the Project. All communications between Architect and County's legal advisors with respect to the matters addressed by this Paragraph 2.4.6 constitute confidential attorney-client communications, protected attorney work product and contain other confidential information that is not to be disclosed to third parties. Architect shall maintain such confidentiality, privileges and protections against any intentional or inadvertent disclosure or other action within the control of Architect or its Subconsultants that might cause such privileges or protections to be lost or diminished.

## 2.5 CONSTRUCTION DOCUMENTS

Without limitation to the other provisions this Agreement requiring the production, preparation or delivery of documents or things by Architect, the Construction Documents delivered to County shall include those Design Documents described in Construction Document Deliverables – Exhibit "O" attached hereto in a condition that is appropriate to each of the descriptions of the Phases of Basic Services set forth in the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto.

## 2.6 DESIGN COORDINATION STANDARDS

All Drawings and Specifications submitted by Architect to County for its review shall conform to the Design Coordination Standards. Notwithstanding the division or delegation by Architect of responsibility for preparation of some portions of the Design Documents to separate Subconsultants, Architect shall remain responsible for the complete coordination, in every respect and without limitation, of the information contained in the Design Documents, whether prepared by Architect or its Subconsultants.

## 2.7 COMMUNICATIONS

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

## 2.8 CONSTRUCTION MEANS, METHODS AND SAFETY

Unless the Architect has breached this Agreement or Architect or a Subconsultant has violated an Applicable Law, acted with willful misconduct or violated the standard of care set forth in Section 1.3, and then only to the extent of such breach, willful act or violation, Architect shall have no responsibility or liability with regard to, and Contractor and the Separate Contractors shall be solely responsible for, all selections (other than those selections expressly dictated by Architect or the Subconsultants in the Design

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Documents) of, and all supervision, implementation and enforcement relating to, construction means, methods, sequence, techniques, procedures or related matters involving health and safety of persons or protection of property at the Site during construction.

## 2.9 REJECTION OF WORK

**2.9.1 Recommendations by Architect.** Architect shall recommend in writing to County the rejection of Work that Architect determines or believes does not conform to the Contract Documents, including, without limitation, Work that has not been inspected or tested in accordance with the requirements of the Contract Documents.

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

**2.9.3 No Duty of County.** Neither County's authority under this Section 2.9 nor a decision made in good faith by County in accordance with the provisions of this Section 2.9 either to reject or not reject Work shall give rise to a duty or liability of County to Architect, Contractor, or any other person or entity to reject Work, whether or not such rejection is recommended by Architect.

**2.9.4 Contractor Responsibility.** No determination by Architect, that is exercised in good faith and in accordance with the standard of care set forth in Section 1.3, above, to recommend or not recommend rejection of Work shall give rise to any liability on the part of Architect for Defective Work provided by Contractor or a Separate Contractor. No recommendation by Architect to reject or not reject Work shall be interpreted as relieving Contractor or any Separate Contractor of its responsibility for failing to comply with the Contract Documents.

**2.9.5 No Authority to Stop Work.** Architect shall immediately recommend to County the stopping of the Work if circumstances come to Architect's attention that reasonably require the stopping of the Work in order prevent Loss to County or injury or damage to persons or property. Nothing stated herein or elsewhere in this Agreement or its exhibits shall be interpreted as giving Architect or the Subconsultants the right or authority, under any circumstances, to direct any Contractor or Separate Contractor to stop performance of the Work.

## 2.10 PERMITS, APPROVALS

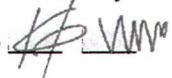
**2.10.1 Submission to Governmental Authorities.** Architect shall promptly submit all necessary applications and other documents required by Applicable Laws for obtaining building permit(s) and approvals of Governmental Authorities for the construction of the Project that are not customarily submitted and secured by the Contractor or Separate Contractors.

**2.10.2 Off-Site Improvements.** Architect recognizes that it is of critical importance to County that permits for off-Site improvements be obtained prior to the Bidding Phase and Architect will plan and schedule the performance of its services accordingly.

**2.10.3 Notice to County.** Architect shall notify the County in writing upon receipt of those permits and approvals that are within the scope of Architect's responsibility under this Section 2.10, specifying in detail the scope of Work covered thereby. If Architect learns that any required permit or approval that it believes County is obligated to obtain directly has not been obtained, Architect shall notify County immediately in writing specifying the permit or approval required and the time frame within in which it must be obtained in order to not cause Delay to the Project.

**2.10.4 Expiration.** Architect shall notify County in writing at least ninety (90) Days prior to the date that any permit or approval obtained by Architect will expire and shall notify the County immediately in

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writing if it learns that any other permit or approval will expire in fewer than ninety (90) Days.

## 2.11 TESTING AND INSPECTIONS

**2.11.1 Recommendations by Architect.** Architect shall recommend in writing and include in the provisions of its Specifications, any special inspection or testing of the Work if, in Architect's or any Subconsultant's professional judgment, such inspection or testing is required by Applicable Laws or is necessary or advisable.

**2.11.2 Review of Reports.** Architect and its Subconsultants shall review all inspection reports, laboratory reports, and test data generated from the conduct of special inspections or testing recommended by Architect pursuant to Paragraph 2.11.1, above, in order to determine whether such data conforms with the requirements of the Contract Documents and Submittals approved by Architect.

**2.11.3 Additional Inspection, Testing.** Architect shall recommend additional inspection or testing not required by the Contract Documents that Architect, in the exercise of the standard of care set forth in Section 1.3, above, determines is necessary, at any point in time that Work is being fabricated, installed or completed, in order to confirm that the Work conforms to the Contract Documents.

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

**2.11.5 Defective Work.** No determination that is made by Architect in accordance with the standard of care set forth in Section 1.3, above, to recommend or not recommend testing or inspection shall give rise to any liability on the part of architect for Defective Work performed by a Contractor or Separate Contractor or be interpreted as relieving any Contractor or Separate Contractor of its responsibility for Defective Work.

## 2.12 COUNTY CONSULTANTS

**2.12.1 Retention.** Architect shall advise County on the appropriate time for retention of County Consultants, not identified in Subconsultants and County Consultants List - Exhibit "F", whose services are necessary to the implementation of the Project.

**2.12.2 Prequalification.** Architect shall provide advice on retention of County Consultants sufficiently in advance to allow time for prequalification and selection of County Consultants in accordance with Applicable Laws and the guidelines, practices and procedures of County. At points in time appropriate to the stage and status of a Project, Architect shall assist County with prequalification and selection of County Consultants, including: (1) preparation of prequalification criteria; (2) preparation of requests for qualifications; (3) conduct of prequalification conferences and responses to questions by proposers; (4) evaluation of proposers; (5) establishment of a list of prequalified professionals; and (6) preparation of a definitive scope of services.

**2.12.3 Coordination and Review.** Architect shall efficiently and expeditiously coordinate its performance under this Agreement with the services provided by the County Consultants including, without limitation, the following:

.1 making provision in the Design Documents prepared by Architect and its Subconsultants to adapt them to the requirements, constraints and limitations of the work product provided by County Consultants to Architect;





.2 furnishing County Consultants with information, as soon as it is available to Architect or its Subconsultants, that the Architect should reasonably expect, in the exercise of the standard of care set forth in Section 1.3, above, the County Consultants may require in order to adapt their work product to the requirements, constraints and limitations of the Site, Existing Improvements and the Design Documents prepared by Architect or its Subconsultants;

.3 evaluating and interpreting the work product of County Consultants to determine if it is consistent with (1) the express, written requirements of Governmental Authorities, including, without limitation, permits and approvals that have been issued or will be required for the Project, and (2) the observable or known conditions at the Site and in Existing Improvements;

.4 evaluating the work product of the County Consultants to determine it is consistent with the Architect's design intent;

.5 assuming primary and lead responsibility to initiate and maintain a regular and continuous exchange of information among the Architect, Subconsultants, and County Consultants so that the coordination required by this Paragraph 2.12.3 is accomplished in a manner that avoids inconsistencies, conflicts, omissions, unnecessary revisions and duplication of effort; and

.6 promptly advising County in writing if Architect or a Subconsultant learns of any defects or deficiencies in the work product prepared by a County Consultant; provided, however, that nothing stated in this Paragraph 2.12.3 shall be interpreted as relieving the County Consultants of liability or responsibility for their work product nor as creating or implying an assumption of any duty or responsibility on the part of the Architect or any Subconsultant for matters that are outside the scope of their respective fields of professional practice.

## 2.13 MEETINGS


**2.13.1 Basic Services.** Architect shall, throughout all Phases of performance of its Basic Services, attend all meetings with County and other Project Team members that are either requested by County or that are reasonably necessary to maintain progress of the Project and shall promptly address and resolve matters in question. Except as otherwise provided in Paragraph 2.13.6, below, attendance at all such meetings, regardless of the number, frequency, timing or duration of meetings requested or required, are part of Basic Services.

**2.13.2 Participants.** Architect shall arrange for and ensure attendance at meetings by those persons employed by Architect and its Subconsultants who are knowledgeable in the matters to be discussed. If any such person is not available, another person reasonably familiar with such matter shall attend in his/her place.

**2.13.3 Conduct of Meetings.** Architect shall come to all meetings prepared to discuss the status of the Project (including both the status of design and construction) and to address any matters in question brought to Architect's attention by other Project Team members. Unless excused by County, Architect's representative attending the meeting shall remain present for the duration of the meeting.

**2.13.4 Action Items.** Architect shall respond promptly with respect to matters assigned to Architect or its Subconsultants at meetings for action or resolution.

**2.13.5 Meeting Minutes.** If requested by County, Architect shall prepare and distribute minutes of meetings. If Architect prepares the minutes, Architect shall promptly review and implement requests for corrections to meeting minutes within five (5) Days after receipt thereof and re-distribute copies of corrected minutes.





**2.13.6 Numerical Limitations.** If under the terms of Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto or elsewhere in this Agreement or its exhibits, County and Architect have agreed to limit the number of meetings required to be attended by Architect or its Subconsultants as part of Basic Services, then the following provisions shall apply:

**.1 Formal Project Meetings.** In order for a meeting to be considered included in and subject to an agreed numerical limitation applicable to meetings attended as part of Basic Services, the meeting must be a Formal Project Meeting. With respect to each Formal Project Meeting, Architect's Basic Services shall include, for all persons attending the meeting on behalf of Architect and its Subconsultants, all time expended by Architect and its Subconsultants: (1) in preparation for, travel (including subsistence) to and from, and attendance at the Project Meeting; (2) in the preparation, review and correction of Project Meeting minutes; and (3) in performing services to follow-up on matters identified in the Project Meeting for further action by a Project Team member, unless and except such follow-up action is based on circumstances constituting independent and authorized grounds for performance of Additional Services and payment of Additional Services Compensation

**.2 Other Basic Services Meetings.** Except for meetings that are required as part of an Additional Service, participation in meetings, conferences and conversations, whether face-to-face or otherwise that do not constitute a Formal Project Meeting, regardless of their frequency, number, duration or timing, shall all be considered part of Basic Services and are not subject to any agreed limitation on frequency, number, duration or timing.

**.3 Additional Services.** Formal Project Meetings that exceed the total number of Project Meetings agreed to be included as Basic Services shall, subject to the other terms and conditions applicable to Additional Services set forth in Article 3, below, constitute an Additional Service provided that Architect notifies County in writing, as far in advance of the Formal Project Meeting as reasonably practicable, that participation in the Formal Project Meeting is believed by Architect to constitute an Additional Service. Such notice, if timely and properly given, shall be deemed to satisfy the requirement for written notice required under Section 3.4, below, and no separate or additional written notice shall be required pursuant to Section 3.4, below. Failure to give such notice shall result in such meeting being deemed to not be a Formal Project Meeting, in which case such meeting will be attended by Architect and its pertinent Subconsultants as part of Basic Services pursuant to Subparagraph 2.13.6.2, above.

**.4 Phase Limitations.** Architect shall not be entitled to Additional Services Compensation for time spent by Architect or its Subconsultants in connection with Formal Project Meetings on the basis that the number of meetings occurring in a Phase exceeds the number of meetings allocated to that Phase unless the total aggregate number of Formal Project Meetings (whether attended by Architect or a Subconsultant) occurring during all Phases exceeds the total aggregate number of meetings agreed to for all Phases (including meetings to be attended by Architect or a Subconsultant). Further, if the number of such Formal Project Meetings occurring during a Phase is fewer than the agreed number of meetings (including meetings to be attended by Architect or a Subconsultant) allocated to that Phase, the shortfall shall be "banked" and available for use by County on any other Phase in which the number of such Formal Project Meetings exceeds the agreed number of meetings (including meetings to be attended by Architect or a Subconsultant) allocated to that Phase. Architect shall not be required to reduce its Basic Services Compensation in the event that the total aggregate number of Formal Project Meetings (whether attended by Architect or a Subconsultant) occurring in all Phases is fewer than the agreed aggregate total of meetings for all Phases.

## 2.14 SITE AND EXISTING IMPROVEMENTS

Architect shall (1) carefully review all reports, studies, surveys, data and other documents concerning the conditions, both visible and concealed, at the Site and in Existing Improvements that are: (a) provided to Architect by the County (including, but not limited to, the Reference Documents listed in the Reference



Documents List - Exhibit "J" attached hereto); (b) recorded with the County's Office of the County Recorder; (c) on file with, and available for review (without necessity of a formal public records request) from, the County's departments responsible for planning, zoning and construction within the County; and (2) exercising the standard of care set forth in Section 1.3, above, identify and review any other reports, studies, surveys, data and other documents that are reasonably available from other sources concerning the conditions, both visible and concealed, at the Site and in Existing Improvements. Architect shall coordinate its Design Documents with the information disclosed in said reports, studies, surveys, data and other documents.

## 2.15 ELECTRONIC PROGRAM MANAGEMENT

If County has established an electronic program management system for the furnishing, storage, exchange and transmission of electronic documentation and communications relating to the Project, then Architect shall, as part of its Basic Services comply with the requirements of such system, including, without limitation, the following: (1) using e-mail for communications, wherever possible; (2) using electronic versions of Design Documents for distribution for bidding or other purposes; (3) scanning of documents; and (4) cooperating in maintaining a common file and electronic archive. All costs of setting up the electronic program management system will be paid directly by County. Costs incurred by Architect to use the system (including, without limitation, the purchase of any software) shall be at Architect's Own Expense. County shall have the right, exercised in its sole and absolute discretion, to cease operation of the electronic program management system at any time upon written notice to Architect if County determines that continued operation is not in the best interests of the County.

## 2.16 TIME AND SCHEDULE

**2.16.1 Master Project Schedule.** Architect shall meet the requirements of the Master Project Schedule - Exhibit "D" attached hereto, including, without limitation, the dates set forth therein for completion of each Phase of Architect's Basic Services, subject to such extensions as are permitted by Paragraph 2.16.3, below.

**2.16.2 Architect's Project Schedule.** Architect shall, within ten (10) Days after execution of this Agreement by County and Architect, prepare and submit for County's approval an Architect's Project Schedule for the Project that: (1) conforms to and incorporates the deadlines and time periods applicable to each Phase as set forth in the Master Project Schedule; (2) coordinates and integrates the planning, programming, design and other activities of Project Team members in appropriate detail to County's satisfaction; (3) shows estimated commencement, duration, responsible parties and sequence for planning, programming and design; (4) shows the interdependencies of the planning and design activities; and (5) shows deadlines and estimates of time for review and receipt of all approvals, decisions and other information to be provided by County and Governmental Authorities, allowing a reasonable time for such review, approvals and decisions.

**2.16.3 Time Extensions.** Architect shall be entitled to an adjustment of the Master Project Schedule and Architect's Project Schedule for, and shall not be considered in default of this Agreement because of, unavoidable and unforeseeable Delays that are beyond Architect's and its Subconsultants' reasonable control and beyond Architect'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) for which Architect has given written notice to County of the circumstances of such Delay within three (3) Days after first learning of such circumstances. Failure to provide such written notice shall result in a waiver by Architect of any right to an adjustment to the Architect's Project Schedule on account of such circumstances. Without limitation to the foregoing, neither the bankruptcy, insolvency nor financial inability of Architect or any Subconsultant, nor any failure by a Subconsultant to perform any obligation imposed by contract or Applicable Laws, shall



constitute a grounds for extension under the terms of this Paragraph 2.16.3.

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

**2.16.5 County Approvals.** Failure by County, a County Consultant or any other Project Team member to provide an approval, decision or other information needed by Architect shall not constitute grounds for extension to the Architect's Project Schedule unless such approval, decision or other information is not provided, without reasonable justification, within seven (7) Days after written request therefor by Architect delivered to the Project Team member from whom such approval, decision or other information is required, with a copy to County, stating that failure to provide such approval, decision or other information within seven (7) Days may or will result in Architect seeking an extension of the Architect's Project Schedule on the grounds of Delay.

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

**2.16.7 No Delay by Architect.** Architect 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.

**2.16.8 Delay Costs.** Architect'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 to the extent permitted by Paragraph 3.2.6, below; and (2) its right to adjustment of the Hourly Rates, if any, provided for by this Agreement. All other rights and claims by the Architect, on its own behalf and on behalf of its Subconsultants, for Losses relating to Delay, from any cause whatsoever, are hereby waived.

## 2.17 SUSTAINABLE DESIGN REQUIREMENTS

**2.17.1 LEED Accreditation.** Architect and each of its Subconsultants in the fields of mechanical design, electrical design, and shall assign at least one (1) individual who has received an accreditation as a "LEED-Accredited Professional" by the U.S. Green Building Council ("USGBC") and demonstrated experience in designing projects to the standards of USGBC to participate in the preparation of the Construction Documents. Such individual shall be considered a Key Person under this Agreement.

**2.17.2 Approvals and Design Credits.** Architect shall include all of the necessary designs and specifications in its Construction Documents, and provide all of the other supporting documentation required by USGBC, to enable County to obtain all full approval and certification by the USGBC that the relevant portions of the Construction Documents meet the requirements of the LEED – NC Reference Guide (First Edition, 2005) and so that County can receive the USGBC "design credits" listed in LEED's Design Credits - Exhibit "Q", attached hereto. Submittals by Architect and Subconsultants for USGBC approval shall, as a part of Basic Services, be corrected or revised, as deemed necessary by the USGBC for issuance of such approvals and design credits. In the event that, due to an error or omission by Architect or a Subconsultant in the preparation of its submittal to USGBC, an appeal is necessary, Architect shall provide as part of Basic Services the services, including revisions to its submittals, that are necessary to the prosecution of the appeal to a final resolution.





**ARTICLE 3  
ADDITIONAL SERVICES**

**3.1 DEFINITION**

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 Section 3.2, below, and those other services marked by a "No" designation in the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto. Additional Services, whether or not listed in this Article 3 or the Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto, do not include any service that arises, in whole or in part, from the breach of this Agreement by Architect, an act or omission of Architect or a Subconsultant constituting negligence (ordinary or professional), willful misconduct or violation of Applicable Laws or information contained in the Design Documents constituting errors, omissions, conflicts, ambiguities or violations of Applicable Laws.

**3.2 ENUMERATION OF ADDITIONAL SERVICES**

In addition to those services listed in the Description of Basic, Additional and Excluded Services - Exhibit "B" that are marked "No" (indicating that they are not part of Basic Services), the following services constitute Additional Services:

**3.2.1** preparing revisions to the Design Development Documents or Construction Documents that are: (1) required to implement changes, additions or deletions to the Final Program that are material in scope and are requested and approved by County in writing after County's approval of the completed Schematic Design Documents, or (2) the result of issuance by County of written directives or instructions that materially conflict with prior written directives or instructions by County; or (3) required by reasonably unforeseeable enactments or revisions of Applicable Laws enacted subsequent to the preparation of the portion of the Design Development Documents or Construction Documents affected thereby;

**3.2.2** providing services as necessary to correct Defective Work furnished by Contractor or a Separate Contractor;

**3.2.3** providing services in connection with a mediation, arbitration, or legal proceeding, except where a party to such proceeding has alleged in good faith the occurrence of any of the following: (1) breach of this Agreement by Architect; (2) an act or omission of Architect or a Subconsultant constituting negligence, willful misconduct, or violation of Applicable Laws; or (3) that the Design Documents prepared by Architect or a Subconsultant contain information constituting errors, omissions, conflicts, ambiguities, or violations of Applicable Laws;

**3.2.4** providing services made necessary by termination of the Contractor or a Separate Contractor, but only to the extent such services exceed the level of services that would have been provided in the absence of such termination;

**3.2.5** providing services to make revisions to the Design Development Documents or Construction Documents due to a substantial inaccuracy in any surveys, test data or other information provided by County pursuant to Section 4.2 of this Agreement under circumstances in which the inaccuracy was not known or reasonably discoverable by Architect or a Subconsultant at the time the portion of the Design Documents being revised was originally prepared by Architect or such Subconsultant;

**3.2.6** providing Basic Services for the Construction Phase of a Project that, solely due to circumstances giving rise to a right of Architect to an extension of time under Paragraph 2.16.3, above, are required to be performed following the sixtieth (60th) Day after (1) the original date for Final Completion

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established by the Construction Contract at the time the Construction Contract is executed by County and Contractor; plus (2) the number of Days of any Periods of Inactivity under this Agreement; provided, however, that nothing herein shall be interpreted as entitling Architect to be paid duplicative compensation (both as Additional Services and Basic Services) for services covered under and compensated by its Basic Services Compensation; or

**3.2.7** subject to the provisions of Paragraph 2.13.6, above, if the scope of Basic Services set forth in Description of Basic, Additional and Excluded Services - Exhibit "B" attached hereto expressly limits Basic Services to a specific number of hours, instances or occasions, providing services that are requested by County that exceed the number of hours, instances or occasions that are agreed to be provided as part of Basic Services.

### **3.3 AUTHORIZATION BY COUNTY**

Additional Services shall be performed only if authorized and directed in writing by County in advance and in accordance with this Article 3.

### **3.4 NOTICE TO COUNTY**

Architect 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 Architect believes may give rise to performance of Additional Services. Unless otherwise provided in Section 3.5, below, Architect waives the right to compensation for Additional Services performed without prior written approval by Assistant CEO/EDA expressly acknowledging that the service is an Additional Service.

### **3.5 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, Architect 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, Architect's performance or County's acceptance of such performance nor County's payment therefor will constitute a waiver on the part of County or Architect 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.

## **ARTICLE 4 COUNTY RESPONSIBILITIES**

### **4.1 ADMINISTRATION BY COUNTY**

**4.1.1 County Requirements.** County shall provide information regarding its 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 Architect's submittals and requests for decisions, approvals or information; provided, however, that no failure by County to respond shall entitle Architect to an adjustment of the Master Project Schedule or Architect's Project Schedule except as permitted by Section 2.16, above. County's review, approval or evaluation of Design Documents shall neither be interpreted as an assumption by County of any responsibility or liability for the technical accuracy or completeness of the Design Documents nor as relieving Architect of any liability or responsibility under this Agreement.



**4.1.3 Assistant CEO/EDA.** Subject in all cases to 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 or Fixed Limit; (2) approve of any extension to the Master Project Schedule or Architect's Project Schedule; (3) authorize the performance of Additional Services; or (4) authorize the incurring of Reimbursable Expense in amounts that exceed any applicable monetary limitations agreed to in writing between County and Architect.

**4.1.4 Board Approval.** Notwithstanding anything stated in this Agreement to the contrary, only the Board of Supervisors has authority on behalf of County to commit or bind County to an obligation to pay any sum of money or additional compensation that exceeds or is beyond the limits of the agreed Basic Services Compensation.

## **4.2 SURVEYS, SERVICES AND REPORTS**

**4.2.1 Reference Documents.** County has provided or made available to Architect for its review the Reference Documents listed in the Reference Documents List - Exhibit "J" attached hereto. Execution of this Agreement shall be deemed acknowledgement by Architect that it has received and read the Reference Documents and in entering into this Agreement has taken into consideration the matters disclosed thereby. County makes no representation that the Reference Documents so listed constitute all of the documents in its custody that may be pertinent to the matters addressed in said Reference Documents or pertinent to Architect's preparation of its Design Documents for the Project.

**4.2.2 Testing and Inspection.** County shall directly contract for and pay the costs of such special testing and inspection that, based upon the recommendations of Architect pursuant to Section 2.11, above, are specified by Architect in the Final Construction Documents.

**4.2.3 Land Survey.** If requested by Architect and required for the performance of this Agreement by Architect, County shall furnish a land survey of the Site and the location on the Site of Existing Improvements, prepared by a licensed surveyor, including grades and lines of streets, alleys, pavements and adjoining property and locations, dimensions and elevations of trees and Existing Improvements above the surface of the ground.

**4.2.4 Geotechnical.** County shall, based upon the recommendations of Architect, furnish geotechnical data and reports, or employ County Consultants to provide such data or reports, when reasonably deemed necessary by Architect, including test logs, soil classifications, soil bearing values and other data and information reasonably appropriate to identifying and evaluating subsoil conditions at the Site.

**4.2.5 County's Expense.** The services, information, surveys and reports to be furnished by County as required under this Section 4.2 shall, except as otherwise provided in this Agreement, be furnished at County's expense.

**4.2.6 No Warranty by County.** In performing its obligations under this Agreement, Architect shall be entitled to rely upon the accuracy and sufficiency of surveys, data, reports or other information furnished by County pursuant to this Article 4 (including, without limitation, the Reference Documents and any drawings, design or technical specifications furnished by County as referenced in Paragraph 4.2.8, below); however, County does not impliedly or expressly warrant the accuracy or suitability thereof and County shall have no liability to Architect (other than as permitted by Article 3, above, for authorized Additional Services Compensation) in the event that such surveys, data, reports or other information are found to be inaccurate, incomplete or insufficient.

**4.2.7 Notice of Defects.** County and Architect shall each provide prompt written notice to the other party if either becomes aware of any defect or deficiency in the Design Documents.



**4.2.8 County-Furnished Designs.** Drawings, designs or technical specifications provided by the County to the Architect for the Architect's use in connection with its performance under this Agreement (including, without limitation, drawings, designs or technical specifications prepared by Architect for other projects previously designed by Architect for County or prepared by other architects, engineers or design professionals, and that County directs be replicated, in whole or in part, by Architect in its Design Documents) are provided for the convenience of the Architect with the understanding that Architect will, based upon a careful and thorough review of them, make any changes or revisions that Architect deems appropriate or necessary before using or incorporating any portion thereof into the Design Documents for the Project. Any portion thereof that is used or incorporated by Architect or any Subconsultant in the Design Documents shall be the sole risk of Architect who shall be solely responsible for the accuracy, completeness and sufficiency thereof to the same extent as if such incorporated drawings, designs or technical specifications were originally prepared by Architect solely for use on the Project.

#### 4.3 ACCESS TO SITE

Architect 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 Architect's performance of its obligations under this Agreement. Architect is responsible to see to it that employees of Architect and its Subconsultants, at all times while present on the Site of the Project, comply with the safety requirements applicable to the Site, including, but not limited to the requirements of the safety programs of Contractor and Separate Contractors performing Work on the Site.

#### 4.4 APPROVALS

Approvals by or on behalf of County of Design Documents prepared by Architect, or of any design or engineering services performed under this Agreement, shall not, under any circumstances, be interpreted as relieving Architect from its sole responsibility to produce and prepare such documents and perform such services in a manner that strictly complies with this Agreement, Applicable Laws and the standards of performance applicable to Architect's performance under this Agreement.

### ARTICLE 5 ARCHITECT'S COMPENSATION

#### 5.1 BASIC SERVICES COMPENSATION

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

**5.1.2 Basic Services Fees.** Subject to the provisions of Paragraph 5.1.4, below, Architect's Basic Services Fees for performance of Basic Services shall be as follows:

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

.2  the product of (1) the actual hours expended by Architect's and its Subconsultants' professional personnel in performance of Basic Services multiplied by (2) the applicable Hourly Rates for such personnel, the total of which shall not exceed a **Maximum Hourly Fee** of \$141,220.00; or,

.3  a Basic Services Fee based on a combination of compensation comprised of

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both **Fixed Fees** and **Maximum Hourly Fees** for each of the following categories of Basic Services:

<u>Basic Services Description:</u>	<u>Basic Services Fees: [Check appropriate box]</u>
(1) _____ _____ :	<input type="checkbox"/> Fixed Fee: \$ _____ <input type="checkbox"/> Maximum Hourly Fee: \$ _____ ;
(2) _____ _____ :	<input type="checkbox"/> Fixed Fee: \$ _____ <input type="checkbox"/> Maximum Hourly Fee: \$ _____ ;
(3) _____ _____ :	<input type="checkbox"/> Fixed Fee: \$ _____ <input type="checkbox"/> Maximum Hourly Fee: \$ _____ .

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

**5.1.4 Basic Services Allowances.** Basic Services Allowances represent estimated Basic Services Fees for a category of Basic Services for which the County and Architect have not agreed upon a Fixed Fee or Maximum Hourly Fee. Architect does not represent, agree or guarantee that the Basic Services Fees that may be required to be paid by County for complete performance of Basic Services that are within the scope of the description of a Basic Services Allowance will not exceed the agreed amount assigned to such Basic Services Allowance. Notwithstanding the foregoing, Basic Services Fees payable by County for Basic Services that are covered by a Basic Services Allowance shall not exceed the amount of the Basic Services Allowance set forth below without the prior written approval of County and absent such approval are deemed performed at Architect's Own Expense. In the event Basic Services Fees for Basic Services that are covered by a Basic Services Allowance are less than the amount of the Basic Services Allowance, set forth below, County shall only pay and be liable for the actual amount of such Basic Services Fees earned by Architect.

<u>Basic Services Allowance:</u>	<u>Amount:</u>
(1) _____ _____ :	\$ _____

INITIALS 

**5.1.5 Design Contingency Allowance.** Design Contingency Allowance shall provide for designated Consulting activities in the Work specified in this Agreement at a fixed amount exclusive of the total compensation amounts agreed to by County and Architect pursuant to Paragraph 5.1.2 and Paragraph 5.1.4, above, for the complete performance by Architect and/or its Subconsultants, and described in the requirements:

- .1 the Design Contingency Allowance is used only as directed by the County.
- .2 the Design Contingency Allowance is used exclusively for the County's purposes and for the defined Scope of Work.
- .3 the Architect will prepare a detailed breakdown of all costs associated with the work defined for the Design Contingency Allowance.
- .4 at project closeout, unused Design Contingency Allowance shall be credited to the County.

**Design Contingency Allowance:**

**Amount:**

(1) Additional Meetings/Site Visits

\$0

**5.2 REIMBURSABLE EXPENSES**

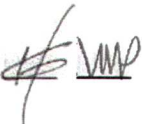
**5.2.1 Exclusive List.** Reimbursable Expenses include, and are limited to, the a reasonable amount for the following costs and expenses if and to the extent they are incurred and paid by Architect in the performance of Basic Services or Additional Services and not as a result of the negligence, willful misconduct or violation of an Applicable Law by Architect or its Subconsultants or the failure by Architect 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 "G" attached hereto), air travel (coach fare only) and related subsistence (meals and lodging at standard business accommodation rates) for travel from Architect's or a Subconsultant's place of business (whether located within or outside the County of Riverside) to a point of destination outside the County or Riverside, but excluding the following: (1) travel and related subsistence to or from the County's offices or the Site for purposes of conducting inspections, observations or attending meetings that are part of Basic Services; (2) travel to and from residences to the Architect's or a Subconsultant's place of business; and (3) travel to or from Architect's or a Subconsultant's place of business located outside the County of Riverside to a location within the County of Riverside.

.2 printing and reproduction (paper and electronic) of Design Documents, at the agreed rates set forth in the Reimbursable Expenses Schedule - Exhibit "G" 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, Architect and/or its Subconsultants are not reimbursable);

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

.4 costs of renderings or mockups requested by County that are in addition to those required as part of Basic Services; and





.5 costs listed in Subparagraphs 5.2.1.1 through 5.2.1.4, above, incurred and paid by Subconsultants in the performance of Basic Services or Additional Services; provided that (1) such costs are due and payable by Architect pursuant to terms of a contract approved by County pursuant to Section 1.6, above; (2) such costs are not included in or covered by any fixed fee agreed to by the Subconsultant under the terms of the Subconsultant's contract; and (3) such costs are not in excess of any not-to-exceed amount applicable thereto under the terms of the Subconsultant's contract.

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

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

**5.2.4 Expense Records.** In addition to Architect's obligations under Section 6.3, below, accurate and detailed records of Reimbursable Expenses shall be maintained in an orderly manner on the basis of generally accepted accounting practices and shall be available at Architect's office (or at County's request, shall be brought by Architect 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.** Architect 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 Architect's sole, exclusive and complete compensation for Additional Services, including, without limitation, all costs and expenses, of any kind, incurred in connection with Architect's and its Subconsultants' performance of Additional Services.

**5.3.2 Additional Services Fees.** Prior to performance of an Additional Service, Architect 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 "H" 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 Architect perform the Additional Services based on actual hours expended at the agreed Hourly Rates, without a not-to-exceed amount, plus reimbursement of authorized Reimbursable Expenses. 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 Architect's Own Expense.

**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 "H" attached hereto. Hourly Rates shall remain fixed for the duration of Architect's performance of this Agreement.





## 5.5 RELEASE FOR PRIOR SERVICES

Architect 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 execution of this Agreement by Architect.

## 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, Architect 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, Architect's performance nor County's payment therefor or thereof will constitute a waiver on the part of County or Architect 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 Architect or its Subconsultants or the breach by Architect of an obligation under this Agreement; or (2) to recoup and recover from Architect amounts paid by County that were not in fact due and owing to Architect under the terms of this Agreement at the time they were paid.

## ARTICLE 6 PAYMENTS TO ARCHITECT

### 6.1 INVOICES FOR PAYMENT

**6.1.1 Invoice Submission.** On the 1<sup>st</sup> day of each month, Architect shall submit to County an accurate and complete Invoice for Payment, using the Invoice for Payment Form - Exhibit "N" attached hereto, signed by Architect and requesting payment for the preceding thirty (30) Day period as follows:

**.1 Basic Services Fees.** Amounts included in an Invoice for payment for Basic Services Fees shall be computed in accordance with the following provisions, as applicable:

**(1) Fixed and Maximum Fees.** Amounts included by Architect in its Invoices for Payments for Basic Services Fees on account of Basic Services or any portion of Basic Services for which a Fixed Fee or a Maximum Hourly Fee has been agreed to in Section 5.1, above, shall not exceed a pro rated 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 Architect, multiplied times (2) the agreed Fixed 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 pro rated 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 "I" attached hereto.

**(2) Basic Services Allowances.** Amounts included by Architect in its Invoices for Payments for Basic Services Fee on account of Basic Services covered by a Basic Services Allowance shall not, prior to the time that the Basic Services Fees incurred equal the Basic Services Allowance amount, exceed a pro rated portion of the agreed Basic Services Allowance amount based on the product of (1) County's Good Faith Determination of the percentage of completion of such Basic

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Services Allowance that has been actually achieved by Architect, multiplied times (2) the agreed Basic Services Allowance amount. If and when the Basic Services Fees incurred for Basic Services covered by a Basic Services Allowance equal the Basic Services Allowance amount, the Architect shall, if County has previously approved in writing of further Basic Services Fees being incurred in excess of the amount of the Basic Services Allowance, thereafter include in its Invoices for Payment the actual amount of such Basic Services Fees incurred up to, but not exceeding, any additional maximum amount authorized by County as part of such approval.

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

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

**(2) Hourly/Not-to-Exceed:** If the Additional Services Fees are based on an hourly compensation, by taking the number of hours of Additional Services performed during the thirty (30) Day period covered by the Invoice for Payment and multiplying those hours times the applicable Hourly Rates for such personnel; 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 rata 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.

**.3 Reimbursable Expenses.** Architect's Invoice for Payment shall include amounts for authorized Reimbursable Expenses incurred and paid by Architect 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 rata share of either the lump sum amount or Maximum Hourly Fee (as applicable pursuant to Section 5.1, above) that County is obligated to pay for Basic Services Fees. Such pro rated share shall be calculated based on the percentages assigned to each Phase of Basic Services in the Payment Schedule - Exhibit "I" 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 overall 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 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 which are the subject of the Invoice for Payment and which 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 Architect in the Invoice for Payment;

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

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


#### **6.4 REVIEW AND PAYMENT**

**6.4.1 Review by County.** County shall, within fourteen (14) Days after receipt of an Invoice for Payment prepared and submitted in accordance with this Agreement, notify Architect 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 Architect 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 Architect written notice of the reason(s) for such withholding. County and Architect shall use their good faith efforts to attempt to resolve their dispute as quickly as practicable under the circumstances. Architect 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 withholds payment 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 Architect plus any penalties that may be due pursuant to California Civil Code Section 3320; no additional amounts shall be payable to Architect for interest on such unpaid amounts. If County chooses to proceed under Clause (1) of this Section 6.5 and it is subsequently determined that County overpaid Architect, Architect 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

Without limitation to County's rights under California Civil Code Section 3320, County shall have the right, after written notice to Architect, to withhold from payment to Architect 150% of the amount of any Loss resulting from, or threatened as a result of, the negligence of Architect or a Subconsultant or a failure by Architect 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 Architect with respect to responsibility for such Loss, which rights and liabilities shall remain subject to determination in accordance with Article 11 of this Agreement.

## 6.7 LIENS, STOP PAYMENT NOTICES, CLAIMS

Except as otherwise provided herein, Architect shall not permit to be created or to remain undischarged any lien, encumbrance, stop payment notice, claim or charge (collectively, "lien") which arises out of, or relates to, the provision by Architect 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 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 Architect 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 Architect 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 Architect's failure to comply with its obligations under this Section 6.7 shall be paid by Architect to County on demand. Architect 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 to Architect under this Agreement.

## ARTICLE 7 ACCOUNTING, RECORDS AND AUDIT

### 7.1 FINANCIAL MANAGEMENT

Architect 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 Architect and Subconsultants.

### 7.2 RECORD KEEPING

**7.2.1 Books and Records.** Architect 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 Architect seeks reimbursement or payment by County as part of any Invoice for Payment, Claim or other demand; and (3) any other documents that

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County, in its reasonable judgment, deems relevant to the Project.

**7.2.2 Maintenance and Retention.** Architect 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 Architect 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

Architect shall allow County and the auditor for the State of California (and their respective authorized representatives, auditors, and attorneys), not later than the third business day after written notice to Architect, full access at Architect's offices nearest to the Project to inspect, audit and copy any or all of Architect's books and records as described in Section 7.2, above. Architect shall, at Architect'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, Architect 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 ARCHITECT

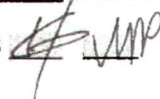
**7.4.1 Cost of Audit.** If an inspection or audit pursuant to Section 7.3, above, discloses that any amount (other than amounts permitted under the terms of this Agreement to be charged by Architect as lump or fixed fee charges) cannot be verified due to a failure by Architect or any Subconsultant to comply with this Article 7, has been improperly, inaccurately or excessively charged to County by Architect or any Subconsultant or has been overpaid by County, and if the total of such amounts for any calendar year audited is five percent (5%) or more of the total amount (exclusive of amounts permitted under the terms of this Agreement to be charged by Architect as lump or fixed fee charges) invoiced to County during such year, then Architect shall pay, at Architect'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 Architect 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 Architect or if no payments are due Architect 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 Architect 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 Architect an additional sum of up to ten percent (10%) of any amount claimed due by Architect until (other than amounts permitted to be charged by Architect as lump or fixed fee charges) has fully complied with any outstanding and unsatisfied request for performance by Architect of any obligation under this Article 7. Upon Architect's full compliance, such sum withheld under this Paragraph 7.4.3 shall be released to Architect.

**7.4.4 Legal Proceedings.** Architect's compliance with the requirements of this Article 7 shall be

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a condition precedent to maintenance by Architect of any legal action or arbitration against County relating to Architect's or County's performance under or related to this Agreement.

## 7.5 SUBCONSULTANTS

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

## ARTICLE 8 DEFAULT, TERMINATION AND SUSPENSION

### 8.1 TERMINATION BY COUNTY FOR CAUSE

**8.1.1 Default by Architect.** Architect 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 Architect 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.

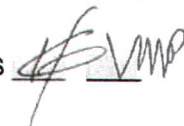
**8.1.2 Remedies Upon Default.** In the event of any default by Architect, including, without limitation, a default that Architect fails to cure within the time periods set forth in Paragraph 8.1.1, above, then County may by written notice to Architect, effective upon Architect's receipt of such notice 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 Architect'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 Architect, if: (1) Architect is an individual and should die or be adjudged incompetent; (2) Architect attempts to assign this Agreement; (3) a petition of bankruptcy is filed by Architect or Architect is adjudicated or admitted to be a bankrupt in connection with an involuntary petition of bankruptcy filed against Architect; (4) Architect should make a general assignment for the benefit of creditors; or (5) a receiver should be appointed on account of Architect's insolvency.





**8.1.5 Architect Obligations.** Upon Architect's receipt from County of notice of County's exercise of any of its rights under Paragraph 8.1.2, above, Architect 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) Days after receipt of the notice of termination, of all contracts with Subconsultants that are outstanding, including, without limitation, with respect to each such contract separately, the terms of the original price, payments made to date, the balance owing, the status of the services performed and any outstanding withholding of funds or default, and a copy of the contract and any written changes, amendments or modifications thereto, together with such other information as County may determine necessary in order to decide whether it is in County's best interests to accept assignment of, or request Architect 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 Architect 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 Architect until County has completed such Basic Services and Additional Services.

**8.1.7 Payment to Architect.**

.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 Architect (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 Architect, 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 Architect 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 Architect 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 Architect 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 Architect; and (2) Architect shall continue performance of such Basic Services and Additional Services and shall be paid by County therefor in accordance with the terms of this Agreement.

.3 **Conversion.** In the event a termination, discontinuance or take over by County

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for cause pursuant to this Section 8.1 is determined to be wrongful, Architect'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 Architect 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 Architect's performance under this Agreement. Upon receiving such notice, Architect shall, unless the notice directs otherwise, take the actions required by Paragraph 8.1.5, above.

### 8.2.2 Payment to Architect.

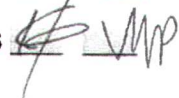
**.1 Terminated Services.** With respect to any or all Basic Services and Additional Services that are terminated, discontinued or taken over by County pursuant to Paragraph 8.2.1, above, Architect shall, within seven (7) Days after exercise by County of a right to terminate, discontinue or take over 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 Architect 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 Architect the amount, if any, owing to Architect 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 Architect; and (2) Architect 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.** Architect 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 Architect may have under this Agreement or Applicable Laws for recovery of Losses caused or claimed to be caused by County's termination, discontinuance or take over of this Agreement, including, without limitation, Losses associated with lost profits, lost opportunity, and other consequential damages.

## 8.3 SUSPENSION BY COUNTY

County shall have the right to order, in writing, a suspension of performance of all services by Architect 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 Architect or the negligence, willful misconduct or violation of an Applicable Law by Architect or a Subconsultant, and if County thereafter requests in writing that Architect resume performance following such suspension, then Architect shall be entitled to payment as additional compensation of any unavoidable direct, out-of-pocket costs payable by Architect or Subconsultants to third-party vendors of supplies as a result of such suspension. No other adjustment to Architect's compensation and no other recovery by Architect or any Subconsultant of Losses associated with such





suspension shall be permitted.

#### 8.4 TERMINATION BY ARCHITECT

**8.4.1 Architect'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 Architect, then, upon an additional ten (10) Days' written notice to County of intent to terminate, Architect may terminate this Agreement. The foregoing constitutes the Architect'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 Architect.** In the event of a termination by Architect pursuant to this Section 8.4, Architect'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 ARCHITECT

**9.1.1 Basic Indemnity.** To the fullest extent permitted by Applicable Laws, Architect agrees to defend (through legal counsel reasonably acceptable to County), indemnify, and hold harmless County of Riverside, its Agencies, Districts, Departments and Special Districts, Board of Supervisors, elected and appointed officials, and each of their respective directors, members, officers, employees, agents, representatives, 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 ordinary and not professional negligence (including, without limitation, negligent breach of contract), recklessness, or willful misconduct on the part of Architect or its Subconsultants, or their respective employees, agents, representatives, or independent contractors. Architect further agrees to and shall indemnify and hold harmless the Indemnitees from all liability arising from suits, claims, demands, actions, or proceedings made by agents, employees or subcontractors of Architect for salary, wages, compensation, health benefits, insurance, retirement or any other benefit not explicitly set forth in this contract and arising out of work performed for County pursuant to this Agreement. 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 Architect to indemnify and hold harmless any Indemnitee to the extent not required under the provisions of Paragraph 9.1.3, below.

**9.1.2 Indemnity for Design Professional Services.** To the fullest extent permitted by Applicable Law, Architect agrees to defend (through legal counsel reasonably acceptable to County), indemnify and hold harmless the Indemnitees, and each of them, against any and all Losses that arise out of, pertain to, or relate to, any negligence, recklessness or willful misconduct constituting professional negligence on the part of Architect or its Subconsultants, or their respective employees, agents, representatives, or independent contractors. The Indemnitees shall be entitled to the defense, and indemnification provided for hereunder regardless of whether the Loss is, in part, caused or contributed to by the acts or omissions of an Indemnitee or any other person or entity; provided, however, that nothing contained herein shall be construed as obligating Architect to indemnify and hold harmless any Indemnitee to the extent not required under the provisions of Paragraph 9.1.3, below. Architect shall defend and pay, all costs and fees, including but not limited to attorney fees, cost of investigation, and defense, in any loss, suits, claims, demands, actions, or proceedings to the extent and in proportion to the percentage, such costs and fees arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Architect arising out of or from the performance of professional design services under this Agreement. The





duty to defend applies to any alleged or actual negligence, recklessness, willful misconduct of Architect. The cost for defense shall apply whether or not Architect is a party to the lawsuit, and shall apply whether or not Architect is directly liable to the plaintiffs in the lawsuit. The duty to defend even applies even if Indemnitees are alleged or found to be actively negligent, but only in proportion to the percentage of fault or negligence of Architect.

**9.1.3 Limitations on Indemnity Obligation.** Without affecting the rights of County under any other provision of this Agreement, Architect shall not be required to indemnify or hold harmless or provide defense or defense costs to 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 Architect and Indemnitee or has been adjudged by the findings of a court of competent jurisdiction.

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

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

**9.1.6 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.

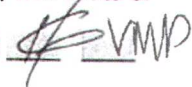
## ARTICLE 10 INSURANCE

### 10.1 ARCHITECT'S INSURANCE

**10.1.1 Required Coverages.** Prior to the commencement of any services, Architect 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-8, the insurance coverages set forth in this Section 10.1, which coverages shall remain in force throughout Architect'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 Architect from claims which may arise out of, or result from, the Architect's performance of this Agreement, whether such performance be by itself or by any Subconsultant, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and shall comply with the following requirements:

.1 **Commercial General Liability** insurance on a form at least as broad as Insurance Services Office ("ISO") Commercial General Liability Coverage "occurrence" form CG20101185 (Form B) or ISO Comprehensive General Liability "occurrence" form acceptable to the County with the Broad Form Comprehensive General Liability Endorsement GLO404 (with no Property Damage Liability exclusions pertaining to loss by explosion, collapse or underground damage), including, without limitation, coverage for bodily injury, sickness, disease, or death of any person, injury to, or destruction of tangible property, including loss of use resulting therefrom, blanket contractual liability coverage (including, without limitation, coverage for the Architect'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

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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: \$5,000,000 per claim and \$5,000,000 in the annual aggregate. Such policy shall provide coverage (including, without limitation, all costs and expenses resulting from the investigation and defense of any claim) for damages from claims for bodily injury or property damage to County or to any third party (including, without limitation, loss of use of damaged and non-damaged property) due to any breach of duty in the performance of professional services. Professional liability coverage shall have an inception date or a retroactive date coinciding with, or prior to, the date of execution of this Agreement or the date of first performance of any services under this Agreement, whichever date is earlier, and coverage shall continue uninterrupted until five (5) years after Final Completion and Acceptance of the entire Project. Coverage for such post-completion period may be provided by renewal or replacement of 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 \$500,000.

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

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

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

**10.1.3 Additional Insureds.** Architect 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 \$500,000 per occurrence. All deductibles and self insured retentions on insurance required to be obtained by Architect under this Agreement shall be borne by Architect 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, Architect shall provide County with written evidence of the required coverages in the form of certificates of insurance with the applicable endorsements (including, without limitation, an endorsement confirming coverage for the Additional Insureds) attached or copies of the policies. County reserves the right to require complete, certified copies of all required insurance policies at any time, including endorsements providing the coverages required by this Agreement.

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

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

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

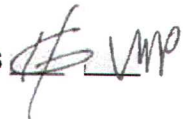
## ARTICLE 11 DISPUTE RESOLUTION

### 11.1 RESOLUTION OF DISPUTES

Disputes between County and Architect 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 Architect without Delay to Architect's performance under this Agreement. However, unless this Agreement expressly provides otherwise, neither such good faith determination or decision nor Architect's compliance therewith shall be interpreted as precluding the Architect 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, arbitration, or other legal proceeding 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 arbitration, mediation, 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 or arbitrated 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

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

### 12.2 INFRINGEMENT

Architect 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 ARCHITECT

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

## ARTICLE 13 MISCELLANEOUS

### 13.1 GOVERNING LAW AND VENUE

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. The Superior Court for the County of Riverside shall have exclusive jurisdiction over any litigation arising out of or relating to this Agreement.

### 13.2 HAZARDOUS SUBSTANCES

**13.2.1 Introduction by Architect.** Architect and its Subconsultants shall not cause or knowingly permit, or include in its Design Documents any provision allowing for, any Hazardous Substances to be deposited, stored, disposed, placed, generated, manufactured, buried, refined, transported, treated, discharged, handled, or located on the Site or in Existing Improvements, except as may be specifically authorized in writing by County; provided, however, that Hazardous Substances may be specified for temporary use or storage where reasonably required for, and in quantities appropriate to, the performance

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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 Architect or a Subconsultant violate the foregoing obligation, Architect 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.

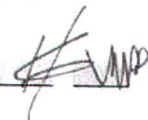
**13.2.2 Existing Hazardous Substances.** Architect recognizes that Hazardous Substances may exist at or beneath the ground at the Site and that certain waste materials, such as, but not limited to, drill cuttings and drilling fluids, must be handled as if contaminated until a determination as to whether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

### 13.6 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon County and Architect 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 Architect without the prior written consent and approval of County, which may be granted or withheld in County's sole and absolute discretion. This Agreement and all of County's rights in and to the Design Documents may be assigned by County upon written notice to Architect. County shall have no liability or responsibility to Architect for payment for any services performed or cost incurred after the date of such assignment and notice thereof by County to Architect.

### 13.7 CONFIDENTIALITY

The Architect acknowledges that, in the course of the Architect's employment and performance under this Agreement, the County may make available to the Architect, and the Architect 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 Architect agrees on behalf of itself and its employees, officers, board members and Subconsultants that all Proprietary Information shall be kept strictly confidential. Such confidentiality obligation includes, without limitation, the following covenants by Architect: (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 unless such disclosure is essential to the Architect'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) Architect shall not publicly reveal any Proprietary Information unless such disclosure is essential to the Architect'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, Architect 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) Architect 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 Architect provides any Proprietary Information to a Subconsultant, the Architect shall be responsible for obtaining and enforcing a written agreement from each such Subconsultant pursuant to which such Subconsultant agrees to be bound by the terms of this Section 13.7; and (7) in the event that the Architect or any Subconsultant is required, or becomes legally compelled, to disclose any of the Proprietary Information or take any other action prohibited hereby, the Architect 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 to recover all damages resulting from a violation hereof. Architect shall instruct all of its employees working on the Project of the foregoing confidentiality obligation.



### 13.8 INDEPENDENT CONTRACTOR

Architect is and shall at all times remain, as to County, a wholly independent contractor, both in respect to its design and construction administration obligations, as well as all other acts or omissions that occur in connection with its performance of this Agreement. Neither County nor any of its agents shall have control over the conduct of Architect or any of Architect's officers, agents or employees, except as otherwise herein set forth. Architect 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 ARCHITECT'S REPRESENTATIONS

Without limitation to any other covenants, agreements, or representations contained in this Agreement, Architect 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; (3) it is duly licensed in accordance with Applicable Laws to enter into this Agreement for performance of the services to be provided by this Agreement; and (4) all services required to be performed by this Agreement or performed under this Agreement shall be performed by persons duly licensed in accordance with Applicable Laws to perform such services. Architect shall require that the foregoing warranties be provided, in writing, by each of its Subconsultants as part of its contracts with its Subconsultant.

### 13.10 SURVIVAL

The provisions of this Agreement which by their nature survive, or 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 obligations of indemnification, insurance, audit, dispute resolution, confidentiality, ownership of documents and records retention, shall remain in full force and effect after 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

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

### 13.13 ADVERTISING

Architect 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.

*[Handwritten initials]*



**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 Architect, the hard copy shall control.

**13.15 EXECUTION**

Execution by means of signature of a party hereto on a facsimile copy or electronically transmitted copy shall be binding to the same extent as execution of an original.

**13.16 COUNTERPARTS**

This Agreement may be executed 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.

**13.17 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.

**13.18 NONDISCRIMINATION**

Architect shall comply, and cause its Subconsultants, of every Tier, to comply, with all requirements of Applicable Laws pertaining to equal opportunity employment and nondiscrimination, including, without limitation, those requirements prohibiting discrimination against or segregation of any person or group of persons on account of age, ancestry or national origin, color, creed, disability, gender, marital status, race, religion or sexual orientation, nor shall Architect permit any such practice prohibited by such requirements to take place in connection with the selection, location or number of consultants or vendors employed. Architect shall include the provisions of this Section 13.18 in all contracts entered into with Subconsultants for performance of services provided for under this Agreement.

**13.19 SERVICES PERFORMED BY ARCHITECT OR AFFILIATES**

The Architect 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 Architect 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 13.19 means any entity related to or affiliated with the Architect or with respect to which the Architect has direct or indirect ownership or control, including, without limitation: (1) any entity owned in whole or part by the Architect; (2) if the Architect is a corporation, any holder of more than 10% of the issued and outstanding shares of the Architect; (3) if Architect is not a corporation, any holder of an ownership interest in Architect; 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 Architect, or any entity owned by the Architect, has a direct or indirect interest which interest includes, but is not limited to, that of a partner, employee, agent, or shareholder.

**13.20 REBATES, KICKBACKS**

Architect 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. Architect 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 hereinbelow. Electronic (i.e., e-mail) notice shall not be sufficient. All notices, demands, or requests to be given under this Agreement shall be given in writing and shall be conclusively deemed received as follows:


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

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

To County at:  
Economic Development Agency  
Riverside Centre  
3403 Tenth Street, 4th Floor  
Riverside, CA 92501  
Attention: Erik Sydow

With additional copies to:  
Economic Development Agency  
Riverside Center  
3403 Tenth Street, Suite 400  
Riverside, CA 92501  
Attention: Vincent Coffeen

To Architect at:  
Tate Snyder Kimsey Inc.  
316 W. 2<sup>nd</sup> Street, Penthouse  
Los Angeles, CA 90012  
Attention: Kevin Quan





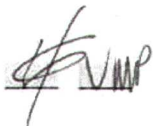
## 14.2 CHANGE OF ADDRESS

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>	-	Property Description
<u>Exhibit "B"</u>	-	Description of Basic, Additional and Excluded Services
<u>Exhibit "C"</u>	-	Initial Program
<u>Exhibit "D"</u>	-	Master Project Schedule
<u>Exhibit "E"</u>	-	Key Personnel List
<u>Exhibit "F"</u>	-	Subconsultants and County Consultants List
<u>Exhibit "G"</u>	-	Reimbursable Expenses Schedule
<u>Exhibit "H"</u>	-	Hourly Rates Schedule
<u>Exhibit "I"</u>	-	Payment Schedule
<u>Exhibit "J"</u>	-	Reference Documents List
<u>Exhibit "K"</u>	-	General Conditions of the Standard Form Construction Contract Between County and Contractor
<u>Exhibit "L"</u>	-	Additional Insureds List
<u>Exhibit "M"</u>	-	Release Forms
<u>Exhibit "N"</u>	-	Invoice for Payment Form
<u>Exhibit "O"</u>	-	Construction Document Deliverables
<u>Exhibit "P"</u>	-	Subconsultant Insurance Requirements
<u>Exhibit "Q"</u>	-	LEED's Design Credits





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

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement, on the 17th day of March, 2020 [to be filled in by Clerk of the Board].

**"COUNTY"**

COUNTY OF RIVERSIDE

By: V. Manuel Perez  
Chairman, Board of Supervisors  
V. MANUEL PEREZ

**"ARCHITECT"**

Tate Snyder Kimsey Inc.  
James Windom Kimsey  
(sign on line above)  
By: James Windom Kimsey  
(type name)

Title: CEO, Secretary, CFO

**The following information must be provided concerning the Architect:**

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

Corporation

If "other", enter legal form of business:

Enter address: 316 W. 2nd Street, Penthouse  
Los Angeles, CA 90012

Telephone: (213) 614-0900

E-mail: losangeles@tska.com

Employer State  
Tax ID #: 95-4458466

License #: C1878974

If Architect is a corporation, state:

Name of President: James Windom Kimsey

Name of Secretary: James Windom Kimsey

State of Incorporation: California

**ATTEST:**

KECIA R. HARPER  
Clerk of the Board

By: Kristina Bell Valdez  
Deputy

(SEAL)

**APPROVED AS TO FORM:**

GREGORY P. PRIAMOS  
County Counsel

By: Kristina Bell Valdez  
Deputy County Counsel