

**COUNTY AGREEMENT NUMBER XXXXXX
CONTRACT WITH XXXX
FOR DESIGN-BUILD OF XXXX**

This Contract (“Contract”) is made and entered into on _____, 20XX by and between the County of San Diego, a political subdivision of the State of California, (“County”) and _____, a California corporation, (“Contractor”), with reference to the following facts:

RECITALS

- A. The County, by action of the Board of Supervisors on _____, Minute Order No. _____, authorized the Director of Purchasing and Contracting to award a Contract for design and construction of the _____, California.
- B. Contractor is specially trained and possesses certain skills, experience, education and competency to perform the work described herein.
- C. On _____, 20XX, County issued Request for Proposals No. _____. Contractor submitted a timely and responsive proposal on or before the deadline of _____, 20XX, at 3:00 p.m.
- D. On _____, 20XX, County issued a notice of intent to award the Contract to Contractor. No protests pursuant to Board Policy A-97 have been filed within the time required by law.
- E. On XXXXXX, 201X, the Contractor submitted revised Proposed Plans.
- F. The Contract shall consist of:
 - 1. This agreement
 - 2. Exhibit A Major Subcontractor List
 - 3. Exhibit B-1 Statement of Work
 - 4. Exhibit B-2 RFP XXXX
 - 5. Exhibit B-3 Contractor’s Proposal dated XXXX, 2018
 - 6. Exhibit B-4 Proposed Plans XXXX dated XXXX
 - 7. Exhibit C Notice to Proceed
 - 8. Exhibit D Performance Bond
 - 9. Exhibit E Payment Bond
 - 10. Exhibit F Insurance

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

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AGREEMENT

SECTION 1.00 DEFINITIONS

- A. “Allowance” is a portion of the Contract Sum to be used for items to be chosen directly by the Owner installed as part of the Work within the specified GMP.
- B. “Application for Payment” means American Institute of Architects (AIA) documents #G702 and #G703 *Application and Certificate for Payment* (latest edition).
- C. “Architect of Record” is the California licensed Architect in charge of the construction documents, construction support, and project closeout.
- D. “BAFO” means Best and Final Offer.
- E. “Bridging Documents” means design documents prepared by the County’s consultant to describe and define the Project including basis of design, specifications and drawings.
- F. “Change Order” means a written contract modification that changes the purpose or intent of the Specifications, the Contract Sum and/or the Contract Time.
- G. “Claim” means a written demand or written assertion by the Contractor seeking, as a matter of right, the payment of money, the adjustment or interpretation of the Contract terms, or other relief arising under or relating to the Contract. In order to qualify as a “claim,” the written demand must state that it is a claim submitted under Section 1.12 of the Contract.
- H. Reserved.
- I. “Contract” means this agreement and all referenced or attached exhibits and approved Contract Modifications.
- J. “Contract Modification” means, collectively, Change Orders and Field Changes.
- K. “Contract Sum” means the GMP as identified in Section 1.07A.
- L. “Contract Time” means time period in calendar days as noted in the RFP as Contract Duration beginning from the start date for Contract Time as identified in section 1.15.A.2 and as adjusted according to this contract. The Project schedule as identified in the **XXXX** will reflect the Start of Work, work progress per the RFP and this Contract and the Contract Time, and as may be revised during performance.

- M. “Contractor” means, _____ and all members of the D-BE, its subcontractors, consultants, employees, representatives, and suppliers.
- N. “Cost of the Work” means the actual Offsite Costs, Direct Costs, and Indirect Costs to be paid to Contractor as identified in XXX and as provided in Section 1.07. The Cost of the Work shall not exceed the GMP as identified in as identified in Section 1.07A.
- O. “Design-Build Entity” (D-BE), is used in the State’s Public Contract Code section 20133(c)(3) to describe the partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.
- P. “Direct Costs” means the actual cost of constructing the Work which shall only include the following: Contractor’s actual cost for labor, materials, equipment and services for Work performed using Contractor’s own forces, if any; Subcontractor’s costs determined from selection in accordance with this Contract; Contractor’s general conditions, which shall not exceed 20% of the cost categories noted above; Contractor’s fee, which shall not exceed 10% of the cost categories noted above; Contractor’s cost of insurance and bonds; furniture, fixtures, and equipment, as identified in XXXX.
- Q. “Drawings” means all planning, design and construction plans or drawings created by or on behalf of Contractor as part of the Project.
- R. “Effective Date” means the date of Contract award.
- S. “Field Change” means a written Contract Modification that does not change the Contract Sum or the Contract Time or the purpose or intent of the Specifications.
- T. “GMP” means Guaranteed Maximum Price and may only be adjusted as permitted in this Contract.
- U. “Indirect Costs” means the actual cost incurred for the following: Contractor’s design professionals and other consultants; actual plan check and permit fees and costs; actual fees and costs for testing and inspection required for the Work.
- V. “Legal Requirements” means all requirements imposed by permits, regulations, guidelines, statutes, contracts, or other provisions that must be complied with in order that the Project (during planning, design, construction, or as completed) shall comply with all federal, State and local laws or regulations, and shall not cause County to be in violation of any statutory, regulatory or contractual provisions.

- W. “Offsite Costs” means the actual costs incurred for the following: work in public right-of-way; utility extension and realignment costs; impact fees.
- X. “Program Architect” is the Architect engaged by the County of San Diego to assist in the preparation of the RFP and perform other duties as assigned by the County.
- Y. “Project” means the _____ Project and all Work necessary to deliver to the County the final product described in Section 1.02.A and throughout this Contract.
- Z. “RFP” means Request for Proposal.
- AA. “Site” means the location for the _____ Project, located at _____, California _____, Assessor’s Parcel Number _____, and the limits of construction activity established for offsite improvements thereto.
- BB. “Specifications” means the planning, design and construction criteria and requirements set forth in Exhibit B-1 Statement of Work and any other non-conflicting criteria or requirements set forth in this Contract.
- CC. “Substantial Completion” or “Substantially Complete” means the state in progress of Work when Work or designated portion thereof is sufficiently complete in accordance with Contract requirements so County can occupy or utilize the Work for its intended use. Only incidental corrective Work, and any final cleaning beyond that needed for the County’s full use, may remain. Notwithstanding any of the foregoing to the contrary, Substantial Completion shall not be deemed to have occurred until (i) any certificates or governmental approvals and permits required for County to occupy or utilize the Work for its intended purposes have been obtained, and (ii) all necessary building services, including, but not limited to, Utilities, information and telecommunication services, and heating, ventilation, and air conditioning, are available.
- DD. “Utilities” includes but is not limited to the utility systems and connections to the utility systems which convey electricity, renewable energy, natural gas, water, recycled water, sanitary sewer, storm sewer, surface drainage, cable and satellite television, telephone, data communication, and wireless communication.
- EE. “Work” means all work included in the Specifications or in approved Contract Modifications, including all acts necessary to complete the Project in accordance with this Contract.

SECTION 1.01 PREREQUISITES; CONTRACT ADMINISTRATION

A. INVESTIGATION REQUIRED

1. Contractor is charged with all information and knowledge that a reasonable contractor would ascertain from having performed required review, research and analysis. The Contract Sum must include entire cost of all work “incidental” to completion of the Work, as that term is defined in Section 1.05.F.

2. Conditions Shown or Indicated in the Specifications: The County warrants and Contractor relies on the accuracy of limited types of information shown or indicated in the Specifications as they refer to underground conditions, as-built conditions, or other conditions or obstructions, including such information contained in Existing Conditions reports.
 - a. As to above-ground conditions or visible as-built conditions, there is no warranty, express or implied, or any representation, express or implied, that such information is correctly shown or indicated, so long as such information is reasonably verifiable by investigation. Contractor is required to make an independent investigation and verify existing above-ground conditions as a condition to contracting. In proceeding with the design and construction, Contractor shall rely on the results of its own independent investigation.
 - b. As to any subsurface condition shown or indicated in the Specifications, as well as those subsurface conditions identified in Existing Conditions reports, Contractor may rely only upon the accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated to the extent provided for in Existing Conditions reports. The County is not responsible for any unreasonable opinions or conclusions drawn from such information. Compensation for unknown differing site conditions shall be allowed as provided in the Contract.

3. Reference is made to Existing Conditions reports for identification of:
 - a. Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that have been made available for informational purposes; and
 - b. Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been made available for informational purposes.
 - c. These reports and drawings are not Specifications but as provided in Existing Conditions reports, Contractor may rely on the information in these reports and drawings. However, Contractor

shall independently verify the information provided in the reports and shall prepare or have prepared new and updated reports in developing the design of the Project.

4. Subsurface conditions affecting cost or quantities of Work differing from those indicated in Existing Conditions reports and elsewhere in the Specifications, or in the information supplied for informational purposes, will be compensated by the County. Compensation for unknown and unknowable differing site conditions shall be allowed as provided in the Contract. Note: Existing condition reports are not meant to be final. D-BE to prepare updates.
5. Except for the reliance described above, and except in the case of latent conditions not discoverable upon a reasonable pre-bid investigation, and except as otherwise provided in Existing Conditions reports, Contractor may not rely upon or make any claim against the County, or any of its consultants, with respect to: any unreasonable Contractor interpretation of or unreasonable conclusion drawn from any technical data or other such data, interpretations, opinions or information, contained in such information. Compensation for unknown differing site conditions shall be allowed as provided in the Contract.
6. Records of existing structures on or in the vicinity of Site of Work may be supplied in Existing Conditions reports, or may be on file in the County's offices and may be examined by Contractor (but subject to the conditions of Existing Conditions reports). Contractor should note that existing structures or facilities may differ from records on file, or may have been altered, and that no representation is made, nor responsibility taken nor warranty given either express or implied, by the County as to the accuracy of locations and other data shown on records, except as otherwise provided in the Contract. After contract award, Contractor is to conduct all necessary investigations and become familiar with any and all actual as-built conditions. Compensation for unknown differing site conditions shall be allowed as provided in the Contract.

B. PERFORMANCE OF WORK; CONTRACTORS AND SUBCONTRACTORS

1. Performance of Work
 - a. Standard of Performance. Contractor shall, in a good and workmanlike manner and in accordance with the highest professional standards, perform and complete the Work and provide the services required of Contractor by this Contract.
 - b. Contractor's Key Personnel. Contractor's duties under this Contract shall be performed on behalf of Contractor by **XXXX**,

Design-Build _____

Design-Build Contract XXXXXX

Contractor's Key Personnel. Contractor represents and warrants that (1) Contractor's Key Personnel has fulfilled all applicable requirements of the laws of the State of California to perform the Work under this Contract and has full authority to act for Contractor hereunder. Contractor's Key Personnel shall perform the Work or oversee the performance of the Work described in the Specifications. Contractor's Key Personnel shall not be changed during the term of the Contract without County's prior written consent. County reserves the right to terminate this Contract pursuant to Section 1.13.F, "Termination of Contract for Cause and Written Assurances of Performance," if Contractor's Key Personnel should leave Contractor's employ, or, if in County's judgment, the Work hereunder is not being performed by Contractor's Key Personnel. (See also Section 1.10 – Contractor's Organization and Equipment.)

- c. Independent Contractor. For all purposes under this Contract, Contractor is an independent contractor, and neither Contractor nor Contractor's employees or Subcontractors shall be deemed to be employees of County for any reasons. Contractor shall perform its obligations under this Contract according to Contractor's own means and methods of work which shall be in the exclusive charge and under the control of Contractor, and which shall not be subject to control or supervision by County except as to the results of the work. Neither Contractor nor Contractor's employees or Subcontractors shall be entitled to any benefits to which County employees are entitled including, without limitation, overtime, retirement, workers' compensation and injury leave.

Subject to those rights specifically reserved in the Contract, the County shall not supervise, direct, or have control over, or be responsible for, Contractor's design or means, methods, techniques, sequences or procedures of construction or for the safety precautions and programs incident thereto, or for any failure of Contractor to comply with laws and regulations applicable to the furnishing or performance of Work.

The County shall not be responsible for Contractor's failure to perform or furnish the Work in accordance with Contract.

- d. Contractor's Equipment. Contractor has secured or shall secure at Contractor's own expense all persons, employees, labor, supplies, materials, equipment, transportation, printing and facilities, except those expressly specified herein to be furnished by County, to perform the services required under this Contract. All such services shall be performed by Contractor, or under Contractor's supervision, by persons authorized by law to perform such services. County shall not be responsible nor be held liable for any damage to person or property resulting from the use, misuse or

failure of any equipment used by Contractor or any of Contractor's employees, even though such equipment may be furnished, rented or loaned to Contractor by County. The acceptance or use of any such equipment by Contractor or any of Contractor's employees shall be construed to mean that Contractor accepts full responsibility for and agrees to exonerate, indemnify and hold harmless County from and against any and all claims for any damage whatsoever resulting from the use, misuse or failure of such equipment, whether such damage be to the employee or property of Contractor, other contractors, County, or other persons.

2. Contractor has identified its professionals, including architects, engineers, designers and others, and its major subcontractors (together for purposes of the Contract, "Major Subcontractor") who will perform a portion of Work, as far as such persons or entities are known on the day on which the proposal is submitted. Those Major Subcontractors are listed on Exhibit A. Contractor shall submit to County any additions to the list of Major Subcontractors which shall be, upon written acceptance by County, incorporated into and made part of Exhibit A, within 14 days of the award. The Major Subcontractor list shall provide the following information:
 - a. Name of Major Subcontractor.
 - b. Business address of Major Subcontractor.
 - c. Brief description of portion of Work to be performed under subcontract.
 - d. Amount to be paid for Major Subcontractor's work, labor, or service.
 - e. The Major Subcontractor's California Contractor's State License Number or Professional License Numbers.

3. Contractor's agents, employees and subcontractors. Contractor shall obtain, at Contractor's expense, all agents, employees and subcontractors required for Contractor to perform the services under this Contract. All such services shall be performed by Contractor's key personnel, or under Contractor's key personnel's supervision by persons authorized by law to perform such services. Retention by Contractor of any agent, employee or subcontractor shall be at Contractor's sole cost and expense, and County shall have no obligation to pay Contractor's agents, employees or subcontractors, to support any such person's or entity's claim against Contractor, or to defend Contractor against any such claim.
 - a. Contractor Responsibility. If Contractor uses a subcontractor for any portion of the services required under this Contract, Contractor remains primarily responsible for carrying out all the terms of this Contract, including the subcontractor's performance and insuring

that the subcontractor retains and makes its records available in accordance with this Contract.

4. Contractor shall constantly give personal attention to faithful prosecution of Work, whether performed by Contractor's own forces or under subcontract, and shall keep the Work under personal control and shall not assign by power of attorney or otherwise, nor subcontract the whole or any part thereof, except as herein provided.
5. Consistent with Public Contract Code Sections 4100 *et seq.*, Contractor shall not substitute any other person or firm as a subcontractor or sub-consultant in place of any of those listed in Contractor's proposal, including its response to the County's request for qualifications and its response to the County's request for proposals, or later (for actual building design or construction), nor shall any subcontractor assign or transfer, subcontract, or permit the same to be performed by any other Subcontractor without County's prior written approval. Should Contractor thereafter let or subcontract any portion of Work in violation of this requirement, County shall, in its sole discretion, have the right to terminate the Contract for cause, assess Contractor a penalty of ten (10) percent of the amount of the subcontract involved, or both. Contractor shall provide County within thirty (30) days of the Effective Date with a complete copy of all executed subcontracts or final commercial agreements with subcontractors and/or suppliers. Contractor shall, within thirty (30) days of written acceptance by County of an addition to the subcontractor list, provide the County with a complete copy of the executed subcontract(s) or final commercial agreement(s) with the additional subcontractor(s) and/or supplier(s).
6. Subcontract agreements and assignments shall preserve and protect the rights of County under the Contract so that subcontracting and assignments will not prejudice such rights. To the extent of the Work to be performed by a subcontractor, Contractor shall require the subcontractor's written agreement (1) to be bound to the terms of the Contract, and (2) to assume vis-à-vis Contractor all the obligations and responsibilities that Contractor assumes toward County under the Contract. (These agreements include for example, and not by way of limitation, all warranties, claims procedures and rules governing submittals of all types to which Contractor is subject under the Contract.) County shall have the right to approve subcontractors engaged by Contractor, as well as their form of contract, which approval shall not be unreasonably withheld. County shall be a designated and intended third party beneficiary of all subcontracts, purchase orders and other agreements between the Contractor and third parties.

7. Contractor shall provide for the assignment to County of all rights Contractor or any Subcontractor may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by Contractor or any subcontractor under the Contract.
8. Each subcontractor shall be reliable and responsible and fully able to perform its portion of the Work covered by the proposed subcontract or assignment, and be able to complete the Work in accordance with the Contract. Contractor may not use unqualified, inexperienced or non-responsive subcontractors. Subcontractors shall not have been terminated for default on any project within the previous three years, shall never have submitted a false claim to any public entity and shall not be suspended or debarred from contracting with any federal, state or local entity in accord with Section 1.13.A.9 of this Contract.
9. Contractor acknowledges and agrees that County accepts no responsibility or liability for disapproval of any proposed subcontractor or assignee and Contractor agrees to indemnify and save harmless County and its officers, directors, representatives, consultants, agents and employees, for any loss, damage, claim, expense or liability arising out of such disapproval by County of any proposed subcontractor or assignee.
10. No subcontract or assignment of this Contract shall relieve Contractor or any sureties of liabilities or obligations under the Contract. Contractor's surety must give written consent to all assignments. Contractor's surety must give written consent to all subcontractors, unless surety confirms in writing that the bond does not require such consent.
11. No assignment by Contractor of this Contract or any part hereof, or funds to be received hereunder by Contractor, will be recognized unless such assignment has written approval of County and surety has been given due notice and approved of such assignment in writing.
12. Contractor shall require each of its subcontractors to execute agreements containing indemnity provisions coextensive with those in this Contract.

C. CONTRACT ADMINISTRATION

1. County's Contracting Officer. The Director of Purchasing and Contracting is designated as the contracting officer ("Contracting Officer") and is the only County official authorized to amend or make any changes to this Contract or to exercise Contract Options.
2. The Contractor designates the following person as the Contractor's

Design-Build _____

Design-Build Contract XXXXXX

Representative: XXXXXX. The Contractor's Representative will administer this Contract, will be the onsite point of contact from the Contractor, and will be responsible for oversight of the design and construction of the Project. The Contractor's Representative will be authorized to execute Contract Modifications or Change Orders on behalf of the Contractor. Except as otherwise provided in the Contract, the Contractor shall issue all communications to County through the Contractor's Representative

3. The County designates the following person as the Contracting Officer's Representative ("COR"): XXXXXX. The COR will administer this Contract by chairing progress meetings with Contractor, receiving and approving Contractor invoices for payment, auditing and inspecting Contractor's records, coordinating inspection of Contractor's work, and providing other technical guidance as required. The COR is not authorized to change any terms and conditions of this Contract. Only the Contracting Officer, by issuing a properly executed amendment to this Contract, may change the terms or conditions of this Contract. Except as otherwise provided in the Contract or subsequently identified in writing by County, the County shall issue all communications to Contractor through the COR, and Contractor shall issue all communications to the County through COR in a written document delivered to COR.
4. Field Changes. Notwithstanding any provision of this Contract to the contrary, the COR may make Field Changes to this Contract that do not change the Contract Sum or the Contract Time or the purpose or intent of the Specifications. Substitution requests as defined in Section 1.13.K will be approved in the form of a Field Change. Each Field Change shall be in writing and shall be signed by the COR and Contractor. All inquiries about Field Changes will be referred directly to the COR.
5. Contract Progress Meetings. The COR and other County personnel, as appropriate, will meet periodically with Contractor to review the Contract performance. At these meetings, the COR will apprise Contractor of how County views Contractor's performance, and Contractor will apprise COR of any problems Contractor is having. Contractor shall also notify the Contracting Officer in writing of any work being performed that Contractor considers beyond the scope of this Contract. Appropriate action shall be taken to resolve outstanding issues. The minutes of these meetings will be prepared by the Contractor, reduced to writing and signed by the COR and Contractor. If COR does not concur with the minutes, COR shall submit a written description of any area of disagreement within 10 days of the meeting. Appropriate action will be taken to resolve any areas of disagreement. Participation in progress meetings by Contractor is not a substitute for compliance with the Claims procedures set forth in Section 1.12.

D. CHANGE ORDERS

1. Director of the Department of General Services. Pursuant to and in compliance with Public Contract Code 20142, the Director of the Department of General Services may at any time, by a written Change Order, make changes (“Changes”), which are changes to the Contract Sum or the Contract Time or the purpose or intent of the Specifications. The Director of the Department of General Services may delegate this authority to the COR. If any such Change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the Work under this Contract, an equitable adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall be modified in writing accordingly. Value Engineering Proposals as defined in Section 1.02.B.5 will be approved in the form of a Change Order. Claim and Contract Modification procedures are set forth in Section 1.12 and 1.14.A.
2. Claims. Contractor must assert any claim for adjustment under this Section 1.01.D by following the procedures set forth in Section 1.12.

SECTION 1.02 SCOPE OF DESIGN BUILD RESPONSIBILITY

A. DESCRIPTION OF WORK

1. Contractor shall provide a complete and operable Project (including tie-ins to Utilities and communications services) in accordance with this Contract, including providing, furnishing, and performing all Work and providing and furnishing all necessary supplies, housing, materials and equipment, and all necessary supervision, labor, and services required for the engineering, design, procurement, quality assurance and inspection, construction, installation, startup, checkout, testing, site cleanup and for the training of County’s personnel, all in conformity with this Contract, for a complete and fully operable Project. The signature and seal of a licensed engineer or architect shall be obtained as necessary for compliance with the Legal Requirements.
2. Contractor shall furnish, or cause to be furnished all site and subsurface investigation, architectural and engineering services, construction management, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and all other facilities and services necessary for proper execution and completion of Work at the Site, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work at the Site.

3. Contractor shall supervise and direct Work at the Site, using Contractor's best skill and attention.
4. Contractor shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work at the Site.
5. Contractor shall obtain all permits, approvals, licenses and easements for Work at the Site and shall arrange for all inspections for Work.
6. Contractor shall give all notices and comply with all Legal Requirements relating to the Work at the Site.

B. DESIGN

1. Contractor shall provide architectural and engineering design services as set forth below for the Project in accordance with the RFP.
2. The standard of care for all architectural and engineering services performed under this Contract shall be the standard of care and skill ordinarily used by members of the architectural and engineering professions with expertise in the design and construction of public facilities, practicing under similar conditions in the greater San Diego Area and at the same time as the services performed hereunder.
3. As the design documents are being prepared, Contractor will keep County apprised of the effects of any County-proposed changes on the project schedule and/or the Cost of the Work. Contractor shall not incorporate any proposed changes into the Drawings unless and until it receives written direction to do so from the appropriate County official. The Contract Sum shall not be changed without a Change Order.
4. Contractor shall provide County with reproducible electronic copies of all design and other documents prepared in connection with the design and construction of the Work.
5. During the course of design and construction, Contractor shall prepare and submit to County written Value Engineering Proposals ("VEP") for alternative systems, means, methods, finishes, equipment and the like that satisfy the general design criteria of the Work but result in savings of time or money in constructing or operating and maintaining the Work. Each VEP shall describe the proposed change, identify all aspects of the Work directly or indirectly affected by the change, specify the cost or time savings to be achieved if the VEP is accepted, and detail any anticipated effect on the service life, economy of operation, ease of maintenance,

appearance, design or safety standards of the completed Work. In addition to VEPs submitted during design phase, Contractor shall solicit and submit VEPs developed during buyout and construction of the Project. Cost and time savings resulting from VEPs will remain in the Contract but will be established as “Reserves” to be applied at the County’s discretion against the cost and schedule of Change Orders or future phases of Work. Reserves remaining at the end of the Project will be included in the calculation of Savings as defined in Section 1.07.D.6.

C. SCHEMATIC DESIGN

1. Contractor shall cause to be prepared and furnish to County for review, schematic design documents consistent with the Contractor’s Proposal and based upon County's requirements for the Work. These Documents will be for County's use in determining whether the proposed design of the Work is acceptable.
2. Contractor shall furnish to County for review schematic design documents at the 60% and 100% completion of Schematic Design. Contractor shall furnish to County a detailed schematic design update to the Cost of the Work prepared on a mutually agreeable basis for the purpose of monitoring project cost.
3. The County shall review and provide written comments to Contractor within thirty (30) days of receipt of a complete package of schematic design documents. If requested by County, Contractor and its Design Professionals will meet with representatives of the County to discuss the schematic design documents.

D. DESIGN DEVELOPMENT

1. Upon County's written approval of a schematic design and written authorization from County, Contractor shall address all of County's comments on the schematic design documents to County's satisfaction, and shall cause to be prepared design development documents to fix the size and character of the Work. These design development documents shall be based on the schematic design documents approved by County and shall provide the basis for the final design and construction of the Work. Contractor shall highlight in the design development documents the modifications made to address County's comments on the schematic design documents.
2. Contractor shall furnish to County a detailed design development update to the Cost of the Work prepared on a mutually agreeable basis for the purpose of monitoring project cost.

3. Contractor shall furnish to County for review design development documents at 60% and 100% completion of the Design Development.
4. The County shall review and provide written comments to Contractor within thirty (30) days of receipt of a complete package of design development documents. If requested by County, Contractor and its Design Professionals will meet with representatives of the County to discuss the design development documents.

E. CONSTRUCTION DOCUMENTS AND GMP UPDATES

1. Upon written approval of the design development documents and written authorization from County, Contractor shall address all of the County's comments on the design development documents to County's satisfaction and cause to be prepared construction documents to fix the size and character of the Work. Contractor shall highlight in the construction documents the modifications made to address County's comments on the design development documents. The construction documents shall address County-requested changes to County's satisfaction.
2. The construction documents may consist of drawings, specifications, and other documents (including both paper and electronic data necessary to reproduce such documents). The construction documents shall be consistent with the Contractor's Proposal and the approved design development documents, provide information for the use of those in the building trades, and include all documents required for regulatory agency approvals.
3. Contractor shall furnish to County for review construction documents at the 60%, 90%, and 100% milestones and, if at a different time, when the construction documents are issued for bidding. These documents are for County's use in determining that the design of the Work is being carried out in a manner consistent with the Contractor's Proposal and approved design development documents.
4. The County shall review and provide written comments to Contractor within thirty (30) days of receipt of a construction document submittal. If requested by County, Contractor and its Design Professionals will meet with representatives of the County to discuss the construction documents.
5. Contractor will revise the construction documents to address the issues raised by the County and will resubmit the construction documents to County within ten (10) days of receipt of the County's comments.

6. Contractor and County will continue to review and submit the construction documents until the County approves the construction documents in writing.
7. If the County discovers any inconsistencies or inaccuracies in the information presented by Contractor, it shall notify Contractor, who shall make appropriate revisions.
8. The construction documents shall be prepared in accordance with all Legal Requirements, building codes, rules, and regulations. Contractor represents that it has or will have carefully examined the Site and all reports, studies and other documents provided by County; has performed all reasonable investigations essential to a full understanding of the difficulties that may be encountered in performing the Work, and will acquaint itself with the conditions under which the Work is to be performed, including without limitation, applicable laws, codes, and other restrictions, local labor conditions, local weather patterns, restriction in access to and from the Site, prior work performed by others on the Site, obstructions, and other conditions relevant to the Work, the Site, and its surroundings. With the exception of (i) Hazardous Materials as identified in Section 1.13, and (ii) subsurface conditions and physical conditions of the Site not reasonably identified in the documents and that could not reasonably be investigated or quantified on account of the existing improvements and/or operations at the Site, Contractor expressly assumes the risk of the actual conditions, either discovered or discoverable through reasonable investigation in the performance of contractual obligations under this Contract. Contractor will complete the Work for the compensation stated in this Contract and, except as provided elsewhere in this Contract, including any amendments, no claim of limitations that may exist or may arise affecting the Work or of difficulties in performing the Work will be an excuse for any failure or omission by Contractor to fulfill the requirements of the Contract for the agreed price.
9. Upon County's review and approval of the 100% submittal, Contractor shall furnish three (3) full-size printed sets of the final construction documents and specifications to County, along with four (4) sets of electronic copies of these materials in a CADD format acceptable to County. The CADD documents will be sealed, and all CADD functions shall be active. In addition, Contractor shall establish and maintain an ftp site on the Internet on which all documents will be posted. Each party shall be solely responsible for reproduction and distribution of all drawings, specifications and other documents for its own use and for the use of its separate consultants, contractors, suppliers and others as may be

applicable.

10. Contractor shall provide all plans and other documents required to apply for and obtain approval of local and State authorities as may be required for the initiation, prosecution and construction of the Work.
11. Pursuant to the requirements of Public Contract Code section 20133, Contractor shall enter into written agreements for construction of the Work based on competitive bids received from at least three licensed, qualified contractors for each portion of the Work to be performed by Subcontractors where the anticipated value of the contract will exceed one-half of one percent of the GMP. Contractor may consider relevant factors in addition to price, such as the contractor's experience and financial strength, in awarding the contracts. The Subcontractors shall be duly licensed and meet the insurance requirements set forth in this Contract.

F. CONSTRUCTION

1. Contractor shall commence construction of the Work as provided in a written Notice to Proceed issued by County.
2. Contractor shall furnish to the County such drawings and other descriptive material as are reasonably required to establish the kind and quality of materials, fixtures and equipment to be provided. The submittals will be made in accordance with the project schedule. Such submittals shall be done with sufficient detail to adequately describe items proposed to be furnished or methods of installation to enable the County to determine compliance with the construction documents. Contractor shall furnish and complete its submittals so as not to delay the Work.
3. Contractor shall furnish satisfactory evidence as to the kind and quality of materials provided. The County may require, and Contractor shall submit if required, a list designating the source of supply of designated materials, fixtures and equipment to be incorporated into the Work, and in such event, such materials, fixtures, equipment or products shall not be delivered to the Work nor installed therein until after the County has approved the specific source of supply.
4. Contractor shall pay royalties and license fees for patented or copyrighted designs, processes or products incorporated into the Work, and further agrees to defend, indemnify and hold County harmless from all suits or claims for infringement of any patent rights or copyrights arising from Contractor's failure to comply with the requirements imposed on Contractor in this Section.

5. Contractor agrees to achieve Substantial Completion of the Work by the milestones set forth in the then-current project schedule, as such dates may be adjusted by time extensions issued in accordance with this Contract.
6. When Contractor considers that the Work, or a designated portion thereof which is acceptable to County, is Substantially Complete, Contractor shall prepare and submit to County a preliminary list of items of Work that, in Contractor's opinion, need to be completed or corrected ("Punch List"). The failure to include any items on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract. Contractor shall provide County with an estimate of the cost to complete or correct each item contained therein, or, if the cost is not known, then Contractor's reasonable professional estimate of such cost to complete or correct such item.
7. Upon receipt of the preliminary Punch List and written notice from Contractor that the Work is ready for review, County shall, within 10 calendar days of receipt of such notice, review the Work. Contractor shall have the right to accompany County in making this review. Based upon this review and upon Contractor's preliminary Punch List, County shall compile a Punch List, which list shall be transmitted to Contractor.
8. When County, on the basis of the review requested by Contractor, determines that the Work or designated portion thereof has achieved Substantial Completion, Contractor will prepare a Certificate of Substantial Completion which shall state the date of Substantial Completion, state the responsibilities of County and Contractor and fix the time within which Contractor shall complete the items listed on the Punch List.
9. Contractor shall diligently complete and correct the items on the Punch List. When Contractor believes that the Punch List is complete and the Work is ready for final inspection, Contractor shall notify County. Within 5 days, the County will review the Work and either approve or disapprove of the Work in writing. If County disapproves of the Work, Contractor shall promptly correct the disapproved Work and notify County that the Work is ready for final inspection subject to this Section 1.02.F.9. Should County and Contractor not agree on whether the Work has been performed as required under this Contract, they shall employ the dispute resolution procedures set forth in Section 1.12 of the Contract.

G. ALL-INCLUSIVE DESIGN BUILD OBLIGATION

Without limiting the generality of Section 1.02.A hereof, Contractor shall provide, at a minimum, the following services and materials and equipment as further specified and described in the Specifications; provided, however, that these sections shall not be construed in any way to limit Contractor's obligations hereunder to design, engineer, furnish, construct, checkout, startup, and test a complete and operable Project (including Utilities and/or tie-ins) in accordance with the provisions of this Contract.

1. Contractor shall provide all engineering services and design, which will set forth in detail with specifications, drawings and requirements for the procurement of the materials and equipment and for the construction of the entire Project and Utilities. Contractor shall furnish the services of all personnel, including supervisors, engineers, designers and draftsmen necessary for the preparation of all drawings and specifications required for the Work. The design shall include all architectural, civil, structural, mechanical, electrical, plumbing, fire protection, irrigation and landscape, and control work.

2. Contractor shall provide all equipment and materials and furnish the services of all supervision, buyers, inspectors, expeditors, and other personnel necessary to procure all materials and equipment for the construction of the Project and Utilities. Contractor shall provide, install, complete and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction utilities (including all water, power and sanitary facilities), transportation (including road or other infrastructure and improvements on and off the Site), customs clearance, quality assurance, and other facilities and services (including any temporary or consumable materials, water, fuels, and electricity) necessary for the proper execution and completion of the Work, including any of the utilities, as required. Contractor shall maintain all materials and equipment in accordance with manufacturer's requirements while such materials and equipment are in transit or care and custody of the Contractor. Without limiting the generality of the foregoing, Contractor shall provide any and all construction required for the temporary upgrading of any public or private road which is inadequate for the performance of the Work, temporarily relocate any interference in public or private roadways necessary for the transportation of equipment and materials, and repair all damage to, or deterioration (other than reasonable wear and tear) of, any public or private road which arises out of the performance of the Work.

3. Contractor shall supervise and direct the Work, and shall furnish the services of all supervisors, foremen, skilled and unskilled labor, and all other personnel in sufficient quantities and with sufficient skills necessary to perform the services in accordance with this Contract. At County's

reasonable request, Contractor shall replace, at Contractor's expense, any individual if it is determined by County that such individual's continued presence would jeopardize the quality or timely completion of the Work. Contractor shall indemnify and save harmless County and its officers, directors, representatives, consultants, agents and employees, for any loss, damage, claim, expense or liability arising out of such disapproved employee. Whenever required by applicable laws or the Contract, Contractor shall employ licensed personnel as necessary to perform engineering, design, architectural, or other professional services in the performance of the Work.

4. All such professional services shall be performed with the degree of care, skill, and responsibility customary among such licensed personnel that specialize in work similar to the Work of this Contract. Contractor shall be responsible for all labor relations matters relative to the Work on the Site and shall at all times use all reasonable efforts to maintain harmony among all workers employed in connection with the Work on the Site. Contractor shall adopt and implement reasonable policies and practices designed to avoid work stoppage, slow downs, disputes and strikes.
5. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this Contract, and County shall not be responsible for or exercise any control over the actions or omissions of Contractor, any supplier, or any of their employees or agents performing any of the Work or Contractor's warranty obligations. Contractor shall prosecute the Work continuously and diligently and complete the Work in accordance with all requirements of this Contract.
6. Contractor shall coordinate ingress and egress to and from the Site so as to minimize disruption to the Work and to traffic in the vicinity of the Site.
7. Contractor shall be responsible for the layout of the Work and shall perform all necessary surveying during the construction of the Project and tie-in to the Utilities and services. The accuracy of all grades, elevations, alignments, and plumbing of any structures and the location of all Facilities described in the final plans and specifications shall be the responsibility of the Contractor. Contractor shall preserve all permanent survey construction monuments and benchmarks. Prior to the final completion date, Contractor shall accurately correct all Project documents to as-built conditions and deliver to the County these as-built documents in accordance with the Contract (see Section 1.11.C.4). Such documents shall show the location of the Project and shall show all related easements, improvement, utilities and rights of way above and below ground, on and off the Site, as of the date of delivery of such documents. Such documents

shall also show the dimensions and the distances to the nearest benchmarks.

8. Contractor shall provide appropriate installation and startup representatives from suppliers of major equipment and control systems, all necessary supervising personnel, all equipment, tools, construction and temporary material, and all labor for checkout, startup and testing. Contractor shall be responsible for checkout, startup, testing, and training of the facility staff and shall carry out those activities in accordance with all applicable codes and Legal Requirements, startup and checkout requirements and procedures as set forth in the Contract.
9. Contractor shall provide County with field offices and other facilities required for the use of the County's representative(s). Such field offices shall be available beginning one month following Contractor's mobilization at the Site to and including final completion and shall be suited for use by such personnel and shall include: two (2) private offices with desk, chair, data line, and phone; one ADA compliant restroom with toilet and sink or access to adjacent ADA compliant restroom; a minimum of two (2) electrical receptacles per room; security bars on all windows; ADA access ramp; heating, air conditioning, water, power, and high speed internet; sanitary facilities, janitorial services, and all utility facilities, including adequate telephone and data lines, telephone equipment, and connections. Contractor shall also provide from time-to-time, upon request of County, reasonable temporary facilities at Contractor's off-site offices to allow County to review the Work in accordance with the Contract (see Section 1.10).
10. Except for safety and warning signs, Contractor shall not install any signs on the Site without the express written consent of County.
11. Contractor shall be responsible for Site security until final completion or termination of the Contract. Such security shall include, to the extent reasonably necessary, barriers, lighting, CCTV monitoring, security patrols, controlled access, and other measures required to prevent vandalism, theft, and danger to personnel, the Project, materials and equipment.
12. Contractor shall prepare or cause to be prepared and shall furnish to County all drawing logs, Drawings, manufacturer's drawings and data, supplier manuals and operating manuals in accordance with the Contract (see Sections 1.09.A.2 and 1.11.C.4).
13. Contractor shall ensure that County and its representatives shall, at all times, have access to the Project for all purposes. In order to allow County

and its representatives to be present, Contractor shall give County at least three (3) business days' advance notice of any system or equipment checkout or testing. If County desires access to any places where Work is being performed or from which materials and equipment are being obtained, Contractor shall provide or arrange reasonable access thereto and shall provide County reasonable advance notice of any factory tests or other off site tests. Contractor shall maintain the Site in a safe condition to permit County and any person authorized in writing by County, to inspect and review all field work during working hours, including materials and equipment, installation, calibration, startup and testing.

14. As part of the procurement of equipment, Contractor shall provide to County a list of recommended operating spare parts, which list shall include all relevant costs and ordering lead time information with terms and conditions. At County's request, Contractor shall procure such operating spare parts from suppliers, on behalf of County. The cost of such operating spare parts shall be covered by Change Order.
15. When any equipment or portion of the Work is damaged, Contractor shall inform County as soon as possible and provide County a damage report detailing such occurrence, any required repairs, and the estimated duration of such repairs.
16. Contractor shall provide to County all tests and measurements, laboratory analyses, and reports made or prepared in connection with the Work.

SECTION 1.03 COMMENCEMENT OF THE WORK

A. COMMENCEMENT OF WORK

1. The Contract Time will commence to run on the day indicated in Section 1.15.A.2 of this Contract. Contractor shall deliver to County all required executed agreements, forms, bonds, and insurance documents. Contractor understands that its failure to comply with the delivery of any document within the time required is a material breach of the Contract and that County may terminate the Contract for cause, in its sole discretion, if Contractor fails to comply with the document delivery requirement, including the timely delivery of any document. A notice to proceed may be given at any time after the Effective Date of the Contract.
2. Contractor shall commence the Work on the date when the Contract Time commences to run, and unless otherwise specifically allowed for in this Contract, no Work shall be done at the Site prior to the date on which the Contract Time commences to run.

B. MOBILIZATION

1. Mobilization shall include, i) commencement of all design activities, including architect, engineer and design services and any and all related support services, and ii) the subsequent moving onto the Site of all equipment; furnishing and temporary buildings, and other construction facilities; all as required for the proper performance and completion of the Work. Mobilization shall be undertaken in compliance with the requirements of the Contract and any staging plan approved by the County and shall include, but not be limited to, the following principal items:
 - a. Moving onto the Site Contractor's equipment as required.
 - b. Installing, outfitting, furnishing, equipping and making operational the temporary facilities as specified.
 - c. Installing temporary construction power and wiring.
 - d. Establishing fire protection system for its temporary facilities.
 - e. Developing construction water supply.
 - f. Providing field office trailers for the Contractor and County representative(s) with all specified furnishings and utility services including telephones.
 - g. Providing connections to on-site sanitary facilities and potable water facilities as specified, or providing a portable toilet as needed.
 - h. Arranging for and erecting of Contractor's work and storage yard(s).
 - i. Posting all Occupational Safety and Health Act of 1970 (OSHA) required notices and establishment of safety programs.
 - j. Establishing procedures for and installing all necessary equipment to comply with all applicable federal, State and local laws and regulations relating to the Work, including storm water run-off systems.

2. Within fifteen (15) days following the Effective Date of this Contract, the Contractor shall submit to the County, for its review and concurrence, a mobilization plan and schedule.
 - a. The mobilization plan and schedule shall be subject to review and concurrence by the County. County shall have ten (10) days to review and approve or reject Contractor's mobilization plan. Should County reject Contractor's mobilization plan, County shall do so in writing. Contractor shall have ten (10) days to provide to County a revised mobilization plan at which time County will have ten (10) days to approve or reject Contractor's revised mobilization plan. After three (3) County rejections, County and Contractor shall follow the dispute resolution procedures set forth in Section 1.12 of the Contract.

- b. The mobilization plan and schedule shall be developed in both narrative and graphic format, and shall include, at a minimum, the following:
 - i. A mobilization plan and Project Schedule for architectural, engineering and design services, including review and permitting processes. The mobilization plan shall include the schedules for developing, reviewing, approving and revising the Drawings as set forth in Section 1.05 of the Contract.
 - ii. A mobilization plan and project schedule for initial construction activities, which include but are not limited to soil import and grading, any offsite improvements, parking and traffic control, and temporary facilities and staging.
- c. Contractor shall provide the mobilization and schedule in Microsoft Project 2000 or later version, in electronic format and hard copy (11" x 17" sheet size minimum format).

SECTION 1.04 BONDS; INSURANCE; INDEMNITY

A. BONDS

- 1. Prior to execution of the Contract, Contractor must file with the County the following bonds:
 - a. Corporate surety bond in a sum not less than 100 percent of the Contract Sum, to guarantee faithful performance of Contract (see Exhibit D Performance Bond).
 - b. Corporate surety bond in a sum not less than 100 percent of the Contract Sum, to guarantee payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in performance of Contract (see Exhibit E Payment Bond).
- 2. Corporate sureties on these bonds and on bonds accompanying bids must be duly licensed and legally authorized to engage in the business of furnishing surety bonds in the State of California. Sureties must be satisfactory to the County and shall have an A.M. Best Company financial rating of A- or better.
- 3. In the event of increases in the Contract Sum by Change Orders, or otherwise, aggregating to ten percent (10%) of the Contract Sum or more, and by all such subsequent increases in the Contract Sum thereafter, the Contractor shall submit to the County evidence of additional bond coverage for such increases in the Contract Sum. Contractor shall be compensated for such additional bond coverage.

B. INSURANCE

See Exhibit F Insurance, incorporated herein by reference.

C. INDEMNIFICATION

1. The County and all of its officers, directors, representatives, agents, consultants, and employees associated with the Work, including, but not limited to, the County Board of Supervisors, County consultants, County's Project Manager and each of the County's representatives, shall not be liable or accountable in any manner for:
 - a. loss or damage of any type that may happen to any part of the Work or any part thereof;
 - b. loss or damage of any type to materials or other things used or employed in performing the Work;
 - c. injury, sickness, disease, or death of any person, including, but not limited to, workers and the public; or
 - d. damage of any type to property;

resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to the performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.

2. To the furthest extent permitted by law (including without limitation California Civil Code Sections 2782 and 2782.8, if applicable), Contractor shall assume the defense of, and indemnify, and hold harmless the County of San Diego, and all of its officers, directors, representatives, attorneys, agents, employees and consultants (including without limitation County consultants) and agents, including but not limited to the County Board of Supervisors, County consultants, Project Manager and all other County Representatives (singularly and collectively referred to as "County Party" or "County Parties") from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorneys' fees and consultants' fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act, omission or negligence of Contractor, Subcontractors (of any tier), designers, suppliers, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether it is caused by the concurrent negligent act or omission, whether active or passive, of County Parties, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on County Parties. Provided, however,

that the indemnification in this Contract shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim against one County Party was caused solely by the negligence or willful misconduct of that County Party. In that event, however, this indemnification shall remain valid for all other County Parties.

3. With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against County and each of its officers, employees, consultants and agents including, but not limited to County, the County Board of Supervisors, County consultants, Project Manager and all other County Representatives.
4. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, its designers or suppliers, or the officers, representatives or agents of any of them.
5. To the furthest extent permitted by law (including, without limitation, Civil Code Section limitation California Civil Code Sections 2782 and 2782.8, if applicable), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout this Contract shall apply even in the event of breach of contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract. If Contractor fails to perform any of these defense or indemnity obligations, County may in its discretion back charge Contractor for County's costs and damages resulting therefrom and withhold such sums from progress payments or other contract monies which may become due.
6. The indemnities in this Contract shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct.
7. The County and all of its officers, directors, representatives, agents, consultants, and employees associated with the Work, including, but not limited to, the County Board of Supervisors, County consultants, County's Project Manager and each of the County's representatives, shall not owe any duty of care to Contractor, its Subcontractors or suppliers.
8. The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person including, but not limited to, workmen and the public or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Work or at any time

before its completion and final acceptance.

SECTION 1.05 DRAWINGS AND SPECIFICATIONS

A. INTENT

It is the mutual intent of Contractor and County that the Contract is to describe a functionally complete Project and individual systems therein to be designed and constructed in accordance with the requirements of the Contract. Contractor will provide for the Contract Sum any Work, including, but not limited to materials, equipment, supplies and testing, that may reasonably be inferred from the requirements of the Contract or from prevailing custom or trade usage as being required to produce the intended result, whether or not specifically called for in the Contract. When words or phrases that have a well-known technical or construction industry or trade meanings are used to describe Work, materials, equipment, supplies and testing, such words or phrases shall be interpreted in accordance with that meaning.

B. DRAWING DETAILS AND SPECIFICATION DESCRIPTIONS

The Specifications establish performance criteria that the final design and construction must meet, which, along with the warranty and other requirements in the Contract, establish the minimum design, material, quality, workmanship and other standards required under the Contract. Contractor has full “turnkey” responsibility to deliver the fully functional, operational Project described in the Contract. Contractor is responsible for meeting the Specifications and warrants that it will complete all Drawings in accordance with the Specifications.

C. SPECIFICATIONS AND DRAWINGS DO NOT CONTROL DIVISION OF WORK

The Specifications and Contractor's subsequent Drawings shall not control Contractor in dividing the Work among Subcontractors or suppliers or delineating the Work to be performed by any specific trade.

D. INTERPRETATION OF CONTRACT, DRAWINGS AND SPECIFICATIONS

Should any discrepancy appear or any misunderstanding arise as to the importance of anything contained in the Contract or the RFP, the matter shall be referred to the County, who shall issue with reasonable promptness such written clarifications or interpretations of the requirements, which shall be consistent with the intent of and reasonably inferable from the Contract and the Specifications. Reasonable promptness may vary with issue; however, it is the goal of the County to respond in no longer than five (5) business days. It is the intent of County and Contractor, as expressed through the Contract, that the Contractor shall have

responsibility to provide a complete and comprehensive design, including Drawings and Specifications, for the Project in order to allow Contractor to complete a fully operational Project on a “turnkey” basis. The County's review of Contractor’s designs, Drawings, samples and submittals shall not relieve Contractor of its responsibility for a complete design complying with the requirements of the Contract and any applicable federal, State or local law and regulation as required by County; but rather, such review shall be in furtherance of the County's monitoring and accepting the design as developed and issued by Contractor, consistent with the Contract. The scope of the Contract shall be construed broadly in favor of the County to reflect the Contractor’s broad, all-inclusive design-build responsibility to provide a complete and operable Project.

E. CHECKING / UPDATING OF DRAWINGS

Contractor shall develop the final design and construction Drawings for the Work and, thereafter, during design and construction, shall continuously check such Drawings for conformance to actual conditions and update such Drawings to maintain complete and current as-built drawings as construction progresses.

F. NECESSARY AND INCIDENTAL WORK

Contractor shall perform reasonably implied parts of Work as “incidental work” although absent from Drawings and Specifications. Incidental work includes any work not shown on Drawings or described in Specifications that is necessary or normally or customarily required as a part of the Work shown on Drawings or described in Specifications. Incidental work includes any Work necessary or required to make each installation satisfactory, legally operable, functional, and consistent with the intent of Drawings and Specifications or the requirements of Contract including required tasks to be performed under the Specifications. Contractor shall perform incidental work without extra cost to County. Incidental work shall be treated as if fully described in the Specifications and shown on the Drawings, and the expense of incidental work shall be included in proposal price and Contract Sum.

G. [RESERVED]

H. STANDARDS TO APPLY WHERE DETAILED AND/OR PERFORMANCE SPECIFICATIONS ARE NOT FURNISHED

Wherever in the Contract, or in any orders given by County, it is provided that Contractor shall furnish materials or manufactured articles or shall do work for which no detailed or performance specifications are set forth, the following general specifications shall apply.

1. Design and construction shall meet the standards required to provide the

County with a fully functional Project, designed and constructed in a manner consistent with the standards, equipment, materials and design, found in comparable, fully functional, contemporary facilities that are owner-occupied and operated.

2. Materials or manufactured articles shall be of the grade, in quality and workmanship, consistent with the requirements of this Contract and obtainable in the market from firms of established good reputation, or, if not ordinarily carried in stock, shall conform to the usual standards for materials or articles of the kind required, with due consideration of the use to which they are to be put. Work for which no detailed specifications are set forth herein shall conform to the requirements of Section 1.05.H.1 above. All such Work shall be consistent with the Contract.

I. PRECEDENCE OF DOCUMENTS

1. To the extent applicable in the design-build context, in the case of discrepancy or ambiguity in the Contract, the following order of precedence shall prevail:
 - a. Contract Modifications in inverse chronological order, and in the same order as specific portions they are modifying (i.e., later-issued language shall take precedence and prevail over earlier conflicting versions or language).
 - b. The Contract and terms and conditions referenced therein.
 - c. Exhibit B-1 Statement of Work.
 - d. Exhibit B-2 RFP XXXXX
 - e. Exhibit B-3 Contractor's Proposal
 - f. Exhibit B-4 (Insert, if applicable)
 - g. Written numbers over figures, unless obviously incorrect.
 - h. Figured dimensions over scaled dimensions.
 - i. Large-scale Drawings over small-scale Drawings.
2. Any conflict between Drawings and Specifications will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
3. Any conflict between a bill or list of materials shown in the Contract and the actual quantities required to complete Work required by the Contract will be resolved in favor of the actual quantities.
4. If there is any discrepancy or ambiguity concerning the quality or quantity of Work or materials required under the Contract, Contractor shall (1) immediately bring such discrepancy or ambiguity to the attention of the

County and (2) without regard to the order of precedence above, provide the better quality of or greater quantity of Work or materials, without an increase in the Contract Sum, unless otherwise ordered by the County.

J. SHOP DRAWINGS AND SUBMITTALS TO BE FURNISHED BY CONTRACTOR IN ADDITION TO COMPLETED DESIGN DRAWINGS

1. Contractor shall submit to County for review and approval a schedule of deliverables which will list each required shop drawing and submittal in order by specification section and the times for submitting, reviewing and processing such submittal. Contractor shall submit to the County a preliminary schedule of deliverables within sixty (60) days of the Notice to Proceed. Contractor shall submit to the County a complete schedule of deliverables at the conclusion of design development as identified in Section 1.02.D. Shop drawings and submittals shall be in addition to Contractor's design developed pursuant to this Contract.
2. Contractor and County will jointly develop a list of submittals and shop drawings, which are to be submitted to the County. Contractor shall submit to County for review a preliminary schedule of shop drawings and submittals ("Schedule of Submittals"), which will list each required submittal in order by specification section and the times for submitting, reviewing and processing such submittal. A preliminary Schedule of Submittals will be submitted within sixty (60) days of the Notice to Proceed. The County understands that a more complete Schedule of Submittals will not be available until sixty (60) days after approval of 100% Construction Drawings or final bid package procurement, whichever is later. Contractor will endeavor to provide updated partial Schedules of Submittals as available every sixty (60) days through the course of the Project. Shop drawings and submittals shall be in addition to Contractor's design developed pursuant to this Contract.
3. Contractor shall not perform work requiring submission of a submittal or shop drawing prior to submission and favorable review of the submittal or shop drawing. Where a submittal or shop drawing is required by the Contract or the final schedule accepted by County, any related Work performed prior to favorable review of the pertinent submittal or shop drawing will be at the sole expense, responsibility and risk of Contractor. County's review of shop drawings, samples and submittals shall not relieve Contractor of its responsibility for a complete design complying with the requirements of the Contract; but rather, such review shall be in furtherance of the County's monitoring and accepting the design as developed and issued by the Contractor, consistent with this Contract.

SECTION 1.06 CONSTRUCTION BY THE COUNTY OR BY SEPARATE CONTRACTORS

A. THE COUNTY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

1. County may, but is not required to, perform with its own forces, construction or operations related to the Project. County may also award separate contracts in connection with other portions of the Project or other construction or operations, on the Site or areas contiguous to the Site, under conditions similar to this Contract, or may have utility owners perform other work.
2. When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in the Contract in each case shall mean the Contractor who executes each County/Contractor Contract.

B. MUTUAL RESPONSIBILITY

1. Contractor shall afford all other contractors, utility owners, and the County (if the County is performing work with its own forces), proper and safe access to the Site, and reasonable opportunity for the installation and storage of their materials, shall ensure that the execution of its Work properly connects and coordinates with their work, and shall cooperate with them to facilitate the progress of the Work.
2. Contractor shall coordinate the Work with the work of other separate contractors, the County, and utility owners, including, at a minimum, holding monthly coordination meetings with them. The County or its designee shall have the right to participate in these coordination meetings, and shall be advised of the results of these coordination meetings at the monthly Progress Meeting.
3. Unless otherwise provided in the Contract, Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of County and the others whose work will be affected.
4. The duties and responsibilities of Contractor under Sections 1.06.B.1 through 3 above are for the benefit of the County.
5. To the extent that any part of Contractor's Work is to interface with work

performed or installed by others, Contractor shall inspect and measure the in-place work and promptly report to County any defect in such in-place work that will impede or increase the cost of the Contractor's interface unless corrected. The County will require the contractor responsible for the defective work to make corrections so as to conform to its contract requirements. If Contractor fails to measure, inspect and/or report defects that are reasonably discoverable, all costs of accomplishing the interface acceptably shall be borne by Contractor. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist.

C. COUNTY AUTHORITY OVER COORDINATION

1. County shall have authority over coordination of the activities of multiple contractors in those cases where the County contracts with others for the performance of other work on the Project, the County performs work with its own forces, or utilities perform work on the Site. (The authority of County with respect to coordination of the activities of multiple prime contractors and utility owners, however, shall not in any manner relieve Contractor of its obligation to other contractors and utility owners to coordinate its work with utility owners and other contractors as specified above.) Contractor shall promptly notify County in writing when another contractor on this Project fails to coordinate its work with the Work of this Contract.
2. Contractor shall suspend any part of the Work herein specified or shall carry on the same in such manner if directed by County when such suspension or prosecution is necessary to facilitate the work of other contractors or workers. No damages or Claims (as defined in Section 1.12 below) by Contractor will be allowed therefor if the suspension or work change is due in whole or in part to Contractor's failure to perform its obligation herein specified to coordinate its work with utility owners and other contractors. If the suspension or work change is due in whole or in part to the failure of another contractor to coordinate its work with Contractor and other contractors and utility owners, then resulting damages or Claims by Contractor will be allowed only to the extent of fault by the County. The County reserves the right to back charge Contractor for any damages or claims of other contractors incurred as a result of Contractor's failure to perform its obligations to coordinate with other contractors and utility owners, and in its discretion, County may deposit the funds retained with a court of competent jurisdiction pursuant to applicable interpleader procedures, and Contractor releases County of any further liability regarding such funds.
3. The County may at any time and in its sole discretion, designate a person,

firm or corporation other than the County, to have authority over the coordination of the activities among the various prime contractors.

SECTION 1.07 THE COUNTY AND PAYMENT

A. COMPENSATION

1. County will pay Contractor a sum not to exceed **\$XXXX** (“Contract Sum”), for the satisfactory completion of the services specified in the Specifications. This sum shall also represent the GMP for Contract.
2. Accounting System and Fiscal Monitoring. Contractor shall maintain and use an accounting and financial support system to monitor, control and verify costs.

B. INVOICES AND PAYMENT

1. Design Services Invoices. Contractor shall submit invoices at completion of the following deliverables:
 - a. 60% Design Development
 - b. 60% construction drawings
 - c. 90% construction drawings
 - d. 100% construction drawings

Each invoice shall identify the deliverable to which the claim applies, the amount of compensation sought, and its percentage of total compensation for design services.

2. Contractor shall prepare and submit monthly applications for payment and warrant title to all Work covered by each application for payment. Applications for payment shall be prepared on American Institute of Architects (AIA) forms G702 and G703 and shall be properly certified and notarized. Contractor shall prepare and submit separate applications for payment and shall maintain separate cost accounting for Contract costs determined to be eligible and for Contract costs determined to be not eligible for payment by State funding and as further defined by the County. County will review Contractor’s applications for payment and make payment thereon, and Contractor shall make payments to Subcontractors, suppliers and others. Contractor’s monthly invoices shall include a statement certifying whether it is in compliance with Section 1.13.A.9 of this Contract. In each application for payment, Contractor shall certify that all work has been performed according to the Contract requirements.
3. Payments. County will pay Contractor in arrears only after receipt and

approval by COR of a properly submitted, detailed and itemized original invoice referencing the Contract number and on a form subject to approval by the County. Each invoice, or portion thereof, so approved and paid shall constitute full and complete compensation to Contractor for the work completed during the billing period pursuant to the Specifications. Payment shall be NET 30 days from receipt and approval of invoice unless otherwise stated.

4. Conditions Precedent to Payments. County may elect not to make a particular payment if any of the following exists:
 - a. Contractor, with or without knowledge, made any misrepresentation of substantial and material nature with respect to any information furnished to County.
 - b. Contractor took an action without receiving County's prior approval as required under this Contract.
 - c. Contractor is in default of a term or condition of this Contract.
5. Schedule of Values. At least fourteen (14) days prior to the first payment application to be made under this Contract and the first payment application to be made for each Phase or portion of the Work, Contractor shall submit to the County a schedule of values in sufficient detail to evaluate progress of the Work and in a form reasonably acceptable to County. The schedule of values shall show all items included in the GMP and be done in sufficient detail and supported by such data to substantiate its accuracy as the County may request. Construction costs will be broken out by subcontract; all other costs will be itemized by contract or other mutually agreeable category. This schedule of values, when approved, shall be used as a basis for Contractor's applications for payment. Progress payments will be made based upon actual progress of the Work, measured against the agreed-upon schedule of values.
6. Draft Payment Applications. Contractor shall deliver to County, on or before the twenty-fifth (25th) day of each month after execution of this Contract, an itemized invoice describing the Work performed in the preceding month, which invoice shall constitute a representation by Contractor that the Work will have progressed to the point indicated by the end of the month, that the quality of the Work covered by the invoice is in accordance with the Drawings and Specifications, and that Contractor is entitled to payment in the amount requested. The Draft Payment Application shall include detailed backup material, including but not limited to invoices from Contractors, Design Professionals and other vendors, as County may reasonably request.
7. Stored Materials. In computing progress payments, Contractor may

include 70% of the value of materials delivered to the Site or fabricated materials stored on the Site or off the Site since the first day of the month during which Contractor submits such progress payment application. Payment for materials stored off the Site shall be contingent upon County receiving satisfactory evidence that Contractor has acquired title to such material, that the materials will be utilized on the Work, and that the materials are satisfactorily stored, protected, and insured, or such other procedures satisfactory to County, to protect County's interests. Materials stored off the Site, to be considered for payment, shall, in addition to the above requirements, be stored in a bonded warehouse, fully insured, and available to County for inspection. If requested by County, Contractor shall obtain an executed security agreement before seeking payment for any materials stored other than at the Site. County shall have discretion as to the amount of stored material and equipment for which payment may be made on any payment application.

8. Reports to be included with Draft Payment Applications. In addition to the documents described above, Contractor shall provide each of the following monthly reports:
 - a. The project schedule (in paper and electronic form) updated to show the actual progress of the Work and any material changes.
 - b. A narrative report describing the actual progress of the Work compared to scheduled progress and explaining any deviations between actual and scheduled progress and any known events that may affect the cost or schedule for the Work.
 - c. A written progress payment report stating the value of all contracts for the Work, all payments made by Contractor to date, current payments requested by Subcontractors, any other pending payment requests, retainage held on each contract, and actual amounts Contractor proposes to pay to each Subcontractor in the current payment period.
 - d. A written Contract Modification report listing all Change Orders by number, a brief description of the Change Order work, any adjustment to the Cost of the Work or guaranteed maximum price, and percent of completion of the Change Order work.
 - e. Reserved.
 - f. Each of the reports identified above is a material component of a complete Progress Payment Application. The County will not process or make payment based upon incomplete payment applications.
9. Draft Payment Application Review Meeting. At a meeting held on or before the end of each month, County and Contractor will review Contractor's proposed values and agree on the status of the Work and the

amount to be paid for that month.

10. Progress Payment Application. The Contractor shall input the established amounts into a master spreadsheet and then prepare a Progress Payment Application for the payment period. The payment application will include only those Offsite Costs, Direct Costs and Indirect Costs that County and Contractor agree are properly due and owing based on the status of the Work.
11. Release and Waiver of Liens. Following agreement on percentages of completion, Contractor shall submit to County statutory forms of Conditional Waiver and Release of Lien Upon Progress Statement from each firm or entity having served a preliminary twenty- (20) day notice or possessing lien or stop notice rights in connection with the Work, warranting that title to all work, labor, materials, and equipment covered by the invoice is free and clear of all liens, claims, security interests, or encumbrances and conditionally releasing all lien, bond, and stop notice rights. No less than once every three months, Contractor shall submit copies of the Unconditional Waiver and Release of Lien Upon Progress Payment received from Contractors, Subcontractors and any other potential claimants for prior progress payments. The Unconditional Releases shall be submitted no later than one month following the end of each quarter of the year.
12. Contractor's Certificate of Payment. The signing of a payment application will constitute a representation by Contractor to County that the Work has progressed to the point indicated and that, to the best of Contractor's knowledge, information, and belief, the Work is in accordance with the Project Documents (subject to any specific qualifications stated in the payment application) and that Contractor is entitled to payment in the amount certified.
13. Retention. Progress Payment Applications shall reflect retention in the amount of five percent (5%) across all cost categories, except for bonds and insurances.
14. Progress Payments. Within thirty (30) days of County's receipt and approval of a properly submitted, complete and correct Progress Payment Application, County shall make payment by wire transfer to Contractor of the amount approved by County for payment, less retention.
15. Payment Disputes. In the event County's opinion of the proper amount due under the Progress Payment Application differs from the amount in Contractor's Certificate of Payment, County and Contractor shall meet during the fifteen (15) day period after County's receipt of the progress

payment application and resolve their differences. Notwithstanding anything to the contrary in this Contract, County shall pay all undisputed amounts due Contractor as shown in the Progress Payment Application within the time set forth above.

16. Grounds for Withholding. In addition to the amounts County may retain as provided elsewhere in this Contract, County may withhold a sufficient amount from any payment otherwise due to Contractor as in County's good-faith determination may be necessary to protect County in the event of the following:
 - a. Third-party claims filed or reasonable evidence indicating probable filing of such claims;
 - b. Defective Work (unless Contractor has commenced and is diligently prosecuting acceptable remedial measures, or has entered into a written agreement with County regarding the performance and schedule of acceptable remedial measures);
 - c. Failure of Contractor to make proper payments to any of its Design Professionals, Subcontractors, or for labor, materials, or equipment;
 - d. Failure of Contractor to comply with any lawful or proper direction concerning the Work given by any representative of County authorized to have given such instruction;
 - e. Any claim or penalty asserted against County on account of a failure of Contractor, Design Professionals, Contractor, Subcontractor to comply with the provisions of Legal Requirements;
 - f. Any reason specified elsewhere in the Project Documents as grounds for withholding or that would legally entitle County to a set-off or recoupment.
17. Withholdings for Third Party Claims. Contractor shall, promptly upon notice by County of withheld amounts pursuant to a third-party claim against Contractor, Design Professionals, or their subcontractors or suppliers, pursue a resolution of the third party claim by settlement, litigation or, if available, arbitration. Contractor's obligations to defend and indemnify under Section 1.04 shall apply to such proceedings.
18. Payment Not Acceptance. Payment for Work completed through periodic progress payments or otherwise shall not operate to waive the County's right to require full compliance with the Contract and shall in no way be deemed as acceptance of the Work paid therefor. Contractor's obligation to complete the Work in accordance with the Contract shall be absolute, unless the County agrees otherwise in writing.

19. Payment by County. If Contractor is in default of its payment obligations to any Design Professional, Subcontractor or material supplier under this Contract, County may pay Design Professionals or Subcontractors directly (which payment shall be credited against the Cost of the Work) absent Contractor's showing of good cause, or with Contractor as joint payee.

C. SUBSTANTIAL COMPLETION PAYMENT

1. At the time of Substantial Completion, Contractor shall submit a Progress Payment Application for the unpaid balance of the Cost of the Work, not including retention. If County, in its reasonable discretion, determines that the retention is insufficient to protect it from costs related to unfinished items of Work (including administrative items such as as-built documents) on the Punch List specified in Section 1.02.F hereof, County may also retain up to 150% of the reasonably estimated cost of completing or correcting items of Work on the Punch List, or another amount as agreed to between County and Contractor, not to exceed the five percent (5%) retention amount specified in Section 1.07.B.13. Payment of any sum withheld on account of items of Work on the Punch List shall be made monthly, through progress payments, as the Punch List items are completed.

D. FINAL PAYMENT

1. Request for Final Payment. When the County reasonably determines that the Work is complete, Contractor shall submit a final payment application including the items listed below (“Final Payment-Application for Payment”). The final payment application shall include an accounting of all allowances and other elements of the GMP.
2. Final Payment-Application for Payment. Contractor shall submit the following items with its Final Progress Payment Application:
 - a. A declaration under penalty of perjury stating that all workers and persons employed, all firms supplying the materials, all contractors, Design Professionals and other individuals and entities that have contributed to the Work have been paid in full except for retention, and that there are no claims outstanding against the Work for either labor or materials, except certain items, if any, to be set forth in detail in the declaration.
 - b. Record drawings as described in the RFP.
 - c. A certificate evidencing that insurance required by the Contract to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to County;

- d. A written statement that Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract;
 - e. Consent of surety, if any, and if required, to final payment;
 - f. Properly executed releases from Contractor and all applicable Subcontractors and material suppliers in the applicable form as provided in California Civil Code Sections 8132 through 8136; and
 - g. A certificate, in form reasonably acceptable to County, certifying that the Work has been substantially completed in accordance with the Contract.
 - h. A statement of any unresolved claims or disputes in connection with the Work.
 - i. Any additional documents reasonably requested by County.
3. Amount of Final Payment. The amount of the final payment shall be calculated as follows:
- a. Take the Cost of the Work, calculated in accordance with this Contract, but not to exceed the GMP;
 - b. Subtract amounts, if any, County deducts or withholds in accordance with Section 1.07.B.16 or in accordance with other specific provisions of this Contract;
 - c. Subtract the aggregate of previous progress payments made by County.
 - d. If the aggregate of previous payments made by County is less than the amount due Contractor, County shall pay the difference to Contractor.
 - e. If the aggregate of previous payments made by County exceeds the amount due Contractor, Contractor shall pay the difference to County.
4. Date for Final Progress Payment. Within thirty (30) days of County's receipt and approval of a properly submitted and complete Final Progress Payment Application, County shall make final payment of undisputed amounts owed to Contractor.
5. Withholding from Final Progress Payment. County may withhold amounts from Final Payment for any of the reasons specified in Section 1.07.B.16, or any other provision of the Contract, or Legal Requirements.
6. Audit of Final Progress Payment Application; Calculation of Fees; Savings; Adjustment of Fees.
- a. County shall audit the Final Progress Payment Application to determine the actual Cost of the Work. Contractor shall provide

such other and further documentation of the Costs of the Work as County may reasonably request.

- b. County shall notify Contractor in writing of the amounts confirmed for the actual Cost of the Work. These amounts shall be included in the final progress payment. If Contractor contests the amount confirmed for final payment, it shall, within seven (7) days of receipt of notice from County of the amounts confirmed, file a protest in writing setting forth in detail all grounds on which Contractor disputes the amount certified. Failure to file a timely protest shall constitute Contractor's waiver and acceptance of the County's audit results and fee calculations for all purposes.
- c. If, upon final completion of the Work, the County determines that the audited Cost of the Work is less than the GMP, the difference shall be considered "Savings." If, after auditing the Cost of the Work, County determines that there have been Savings, the Savings shall be divided sixty-five percent (65%) to County and thirty-five percent (35%) to Contractor. Savings shall be increased by any rebate or tax credit Contractor receives on items that are included in the Cost of the Work, regardless of when it is received. The utility-offered "Savings By Design" program incentives are excluded.

E. SECURITIES IN LIEU OF RETENTION

- 1. In accordance with Public Contract Code Section 22300, at the request and expense of Contractor, securities equivalent to amounts withheld may be deposited with the County, or with a State or federally chartered bank as escrow agent, who shall then pay such monies to Contractor. Upon satisfactory completion of the Work, securities shall be returned to Contractor.
- 2. Securities eligible for investment under this section shall include those listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and County.
- 3. Contractor shall be the beneficial Owner of any securities substituted for monies withheld and shall receive any interest thereon.
- 4. Any escrow agreement shall be null, void and unenforceable unless it is substantially similar to the form set forth in Public Contract Code Section 22300(f).

F. RELEASE OF RETENTION

Following final completion of the Work, Contractor shall request release of retention in writing. County shall release retained funds for the Work to Contractor no later than thirty five (35) days from the date Contractor records a Notice of Completion, provided that Contractor furnishes final conditional lien waivers from all Subcontractors who filed preliminary lien notices or otherwise have stop notice rights in connection with the Project. Notwithstanding the foregoing, County may withhold up to one hundred and fifty percent (150%) of the value of any incomplete or nonconforming Work until those items are completed, not to exceed the five percent (5%) retention amount specified in Section 1.07.B.13.

G. DISALLOWANCE

If Contractor receives payment for work under this Contract which is later disallowed by County, Contractor shall promptly refund the disallowed amount to County on request, or, at its option, County may offset the amount disallowed from any payment due or to become due to Contractor under any contract with County.

SECTION 1.08 CONTROL OF THE WORK

A. SUPERVISION OF WORK BY CONTRACTOR

1. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such personal skills and expertise as may be required and necessary to perform the Work in accordance with the Contract. Contractor shall be solely responsible for the design and means, methods, techniques, sequences and procedures of construction and for the safety precautions and programs incident thereto. The Contractor shall be responsible to see that the completed Work complies with the Contract.
2. Contractor shall keep on the Site at all times during Work progress a competent resident superintendent who shall not be replaced without the express written consent of the County. The superintendent will be Contractor's representative at the Site and shall have complete authority to act on behalf of Contractor. County recognizes that the superintendent does not have contractual or budget authority. All communications to the superintendent shall be as if given to the Contractor.
3. Contractor shall have and maintain a full-time project manager whose duties shall include certifying to the County that the Work has been reviewed and either found to meet the terms and conditions of the Contract or has been found deficient and corrective action will be taken promptly.

B. OBSERVATION OF WORK BY COUNTY

The County may observe and monitor the design and construction through its agents, employees, consultants or others. Contractor in no way is relieved of any responsibility by the activities of County in this regard.

C. ACCESS TO SITE

During performance of Work, the County and its respective agents, representatives, consultants, and employees may at any time enter upon the Site, shops or offices where any part of Work may be in preparation, or factories where any materials for use in Work are being or are to be manufactured, and Contractor shall provide proper and safe facilities therefor, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as the County's interests may require. Other contractors performing work for the County may also, for all purposes required by their respective contracts, enter upon the Site. County and Contractor shall agree on procedures for additional insured requirements for other County contractors on the Site.

D. EXISTING UTILITIES

Drawings may indicate above and below grade structures, drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities, and additional information may be on file at the regional notification center, "Underground Service Alert" ("USA"). Contractor shall locate these known existing installations before proceeding with trenching or other operations that may cause damage, shall maintain them in service where appropriate, and shall repair any damage to them caused by the Work, at no increase in Contract Sum. Additional utilities whose locations are unknown to County are suspected to exist. Contractor shall be alert to their existence; if they are encountered, Contractor shall immediately report to County for disposition of the same. In addition to reporting if any utility is damaged, Contractor shall take appropriate action. Additional compensation or extension of time on account of utilities not shown or otherwise brought to Contractor's attention, including reasonable action taken to protect or repair damage, shall be determined.

1. At no additional cost to County, Contractor shall incorporate into the Work main or trunk line utilities identified in the Contract and other utilities or underground structures known or reasonably discernible and that will remain in service, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Contractor shall take immediate action to restore any in service installations damaged by Contractor's operations. Should County determine that Contractor has not responded in a timely manner or not diligently pursued completion of the Work, County may restore service

and deduct the costs of such action by County from the amounts due under the Contract.

2. Consistent with Government Code Section 4215, as between County and Contractor, County will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract. County will compensate for the cost of locating and repairing damage not due to Contractor's failure to exercise reasonable care, in the removing and relocating such main or trunk line utility facilities not indicated in the Contract with reasonable accuracy, and equipment on the Project necessarily idled during such work.
3. Prior to performing Work at the Site, Contractor shall lay out the locations of known underground utilities that are to remain in service and other significant known underground installations. At no additional cost to County, prior to commencing other Work in proximity to such known underground utilities or installations that can be readily inferred from adjacent surface improvements, Contractor shall further locate, by carefully excavating with small equipment, potholing and principally by hand, such utilities or installations that are to remain and that are subject to damage. This obligation applies to all utilities.
4. Nothing in this Contract shall be deemed to require County to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred by Contractor from the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site. Contractor shall immediately secure all available information and notify County and utility, in writing, of its discovery, while performing Work under the Contract, of any utility facilities not identified in the Drawings and Specifications.

E. UNDERGROUND FACILITIES

1. Before commencing work of digging trenches or excavation, Contractor shall review all information available regarding subsurface conditions, including but not limited to information generated by or on behalf of the Contractor, County information and other information reasonably available to Contractor, and subject to the terms and conditions of these documents, Contractor shall also comply with Government Code Sections 4216 to 4216.9, and in particular Section 4216.2 which provides, in part:

“Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center

at least two working days, but no more than 14 calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator, and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation.”

2. Contractor shall contact USA, and schedule the Work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities. Contractor is charged with knowledge of all subsurface conditions reflected in USA records. Prior to commencing excavation or trenching work, Contractor shall provide County with copies of all USA records secured by Contractor. Contractor shall advise County of any conflict between information the County provided, the Drawings and that provided by USA records. Contractor’s excavation shall be subject to and comply with the Contract, including without limitation Sections 1.02 and 1.08.D of this Contract.
3. In the case of any Underground Facilities that are located on County property and are used to furnish services on County property or are under the operation and control of the County, or in any other case in which the USA does not provide an inquiry notification number and notify its members that have subsurface installations of the area of the proposed excavation, then the Contractor shall be fully responsible for locating the Underground Facilities and protecting such Underground Facilities during excavation. In locating the Underground Facilities, Contractor shall investigate all records available at the County and all other records available to it relative to the location of such Underground Facilities and shall make use of all necessary industry locating techniques and/or engage qualified locating service to perform such services for the Contractor. The Contractor shall undertake no excavation Work until such time that the Underground Facilities are located and field marked or determined not to be in the area of excavation. Thereafter, subject to any further requirements in the Contract, Contractor shall determine the exact location of the Underground Facilities by excavating with hand tools within the area of the location of the Underground Facilities. Contractor shall provide the County with adequate prior written notice of its proposed excavation work in an area containing County owned Underground Facilities, and shall submit for the County's approval its plan for locating and protecting the Underground Facility from damage due to the excavation work. The

County's favorable review of such plan shall in no way limit or restrict the responsibility of the Contractor under the Contract and at law and Contractor shall not rely on the County's review as a representation of the location of the Underground Facility, the suitability of the plan or its compliance with law.

4. The cost of all of the following will be included in the Contract Sum and Contractor shall have full responsibility for (a) reviewing and checking all available information and data including described in Section 1.01(A)(2) and information on file at USA; (b) locating all Underground Facilities shown or indicated in the Contract, available information, or indicated by visual observation including, but not limited to, and by way of example only, engaging qualified locating services and all necessary backhoeing and potholing; (c) coordination of the Work with the owners of such Underground Facilities during construction; and (d) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
5. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials generated by or on behalf of the Contractor, or those supplied by County or in information on file at USA or is otherwise NOT reasonably available to Contractor, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven (7) days), and prior to performing any Work in connection therewith (except in an emergency as required by Section 1.16.D of this Contract), identify the owner of such Underground Facility and give written notice to that owner and to County. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
6. Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility only where the Underground Facility:
 - a. Was not shown or indicated in the Contract or in the information as described in Section 1.01.A.2 or in information on file at USA; and
 - b. Contractor did not know of it; and
 - c. Contractor could not reasonably have been expected to be aware of it or to have anticipated it from the information available or from information generated by or on behalf of the Contractor.
7. Underground Facilities are inherent in construction involving digging of trenches or other excavations and Contractor is to apply its skill and industry to verify the information available. Underground Facilities are

often in different locations and elevations than existing information indicates, and such differences shall constitute a differing site condition only if such difference is clearly material and is not discoverable through diligent investigation.

SECTION 1.09 WARRANTY, GUARANTEE AND INSPECTION OF WORK

A. WARRANTY AND GUARANTEE

1. General Representations and Warranties: Contractor represents and warrants that it, and its Subcontractors and designers of every tier are, and at all times will be, capable of performing every phase of the Work, and possesses or will timely obtain all necessary licenses and/or permits required to perform the Work, as necessary to complete the Work in accordance with the terms of the Contract. Contractor warrants that all design, engineering, design related services, construction work and construction services shall be performed in accordance with generally accepted professional standards of good and sound design and construction practices observed by builders and designers with specific experience and specialized expertise in the Work of the Contract. Contractor warrants that the Work shall be fit for its intended purpose, watertight and meeting current and proven recognized industry standards for work similar to the Project and that all systems, equipment, including but not limited to the design and engineering of each item of materials and equipment incorporated therein, shall be new (unless otherwise permitted by the County), shall be of suitable grade of its respective kind for its intended use, shall be free from defects in design, engineering, materials, construction and workmanship, and shall conform in all respects with all applicable requirements of federal, State and local laws, licenses, and permits, the Drawings, Specifications, and all descriptions set forth therein, applicable construction codes and standards, and all other requirements of the Contract including the standard of care specified herein.

2. Extended Guarantees: If any guarantee exceeding one (1) year is provided by the supplier or manufacturer of any equipment used in this Project, then the Contractor's guarantee for such materials shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials and shall supply County with all warranty and guarantee documents relative to equipment and materials incorporated in the job and guaranteed by its suppliers or manufacturers.

3. Environmental and Toxics Warranty: The covenants, warranties and representations contained in this Section 1.09.A.3 are effective continuously during Contractor's Work on the Project and following

cessation of labor for any reason including, but not limited to, Project completion. Contractor covenants, warrants and represents to County that:

- a. No litigation is pending or, to Contractor's knowledge, proposed, threatened or anticipated with respect to the Contractor, or with respect to any other matter affecting the Project or the operation thereof.
- b. To Contractor's knowledge after due inquiry, no lead or asbestos-containing materials will be or were installed or were discovered in the Project at any time during Contractor's construction thereof. If any such materials were discovered, Contractor made immediate written disclosure to the County.
- c. To Contractor's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCB's are, were or will be located on the Project at any time during Contractor's construction thereof. If any such materials were discovered, Contractor made immediate written disclosure to the County.
- d. To Contractor's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are, were or will be located on the Project at any time during Contractor's construction thereof except as required to be installed by the Contract. If any such materials were discovered, Contractor made immediate written disclosure to the County.
- e. Contractor's operations concerning the Project are not and were not in violation of any applicable environmental federal, State, or local statute, law, ordinance, code, rule, order or regulation dealing with hazardous or toxic materials or substances, and no notice from any governmental body has been served upon Contractor claiming any violation of any such statute, law, ordinance, code, rule, order or regulation, or requiring or calling attention to the need for, any work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply with any such statute, law, ordinance, code, rule, order or regulation, with which Contractor has not complied. If there were or are any such notices with which Contractor has complied, Contractor has provided or shall provide the County with copies thereof within two (2) business days of receipt.

B. INSPECTION OF WORK

1. All materials, equipment and workmanship used in the Work shall be subject to inspection or testing at all times during construction and/or manufacture in accordance with the terms of the Contract. Work and materials, and manufacture and preparation of materials, from beginning

of construction until final completion and acceptance of Work, shall be subject to inspection and rejection by County, its agents, or independent contractors retained by County to perform inspection services, or governmental agencies with jurisdictional interests. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where specified, County shall be afforded access for inspection at the source of supply, manufacture or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.

2. Contractor shall give County forty eight (48) hours notice (excluding Saturdays, Sundays and federal, State and local holidays) of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
3. If applicable laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish County with the required certificates of inspection, or approval. The County retains the right to test and inspect the Work without relieving the Contractor of its obligations under this Contract. If County exercises this right to inspect, County will pay the cost of initial testing and Contractor shall pay all costs in connection with any follow-up or additional testing. Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.
4. If any Work (or the work of others) that is required to be inspected, tested or approved is covered by Contractor prior to such inspection, testing or approval, without written approval of County, it must, if requested by County, be uncovered. Uncovering Work shall be at Contractor's expense unless Contractor has given County timely notice of Contractor's intention to cover the same and County has given its written approval of the covering of the Work prior to such inspection, testing or approval.
5. In any case where Work is covered contrary to the written request of County, it must, if requested by County, be uncovered for County's observation or inspection at Contractor's expense.

6. Whenever required by County, Contractor shall furnish tools, labor and materials necessary to make examination of Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished Work. Should Work be found unsatisfactory, cost of making examination and of reconstruction shall be borne by Contractor. If Work is found to be satisfactory, examination will be paid for by the County in manner herein prescribed for paying for alterations, modifications and extra work, except as otherwise herein specified.
7. Inspection of the Work by or on behalf of County, or County's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Contractor shall have an absolute duty, in the absence of a written Change Order signed by County, to perform Work in conformance with the Contract and correct defective work promptly upon knowledge thereof.
8. Any inspection, evaluation, or test performed by or on behalf of the County relating to the Work is solely for the benefit of County, and shall not be relied upon by Contractor. Contractor shall not be relieved of the obligation to perform Work in accordance with the Contract, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by County, whether or not such inspections, evaluations, or tests are permitted or required under the Contract. Contractor shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.

C. CORRECTION OF DEFECTIVE WORK

1. If Contractor fails to supply sufficient skilled workers, suitable materials or equipment, or to furnish or perform the Work in such a way that the completed Work will conform to Contract, County may order Contractor to replace any defective Work, or stop any portion of Work to permit County (at Contractor's expense) to replace such defective Work. These County rights are entirely discretionary on the part of the County, and shall not give rise to any duty on the part of County to exercise the rights for the benefit of Contractor or any other party.
2. If required by County, Contractor shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if Work has been rejected by County, remove it from the Site and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others). Contractor shall provide costs of re-

inspection and re-testing. If the parties are unable to agree on the amount of an appropriate decrease in the Contract Sum, the County may deduct from monies due the Contractor all claims, costs, losses, and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others) as well as all costs of the County incurred in exercising such rights and remedies (including, but not limited to, the costs incurred in the examination, evaluation and determination that such defective work should be corrected or removed and replaced). If the Contractor disagrees with the County's calculation, it may make a claim as provided in Section 1.12. County's rights under this Section 1.09.C.2 shall be in addition to any other rights it may have under the Contract or by law.

3. Correction Period: If within one (1) year after the date of final acceptance or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special warranty or guarantee required by the Contract or supplied with regard to the Work or required by any specific provision of the Contract, any Work is found to be defective, Contractor shall promptly, without cost to the County and in accordance with the County's written instructions, (i) correct such defective work or, if it has been rejected by the County, remove it from the Site and replace it with Work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the County may have the defective work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting therefrom (including but not limited to all costs of repair or replacement of work of others) shall be paid by Contractor. Where Contractor fails to correct defective Work, or defects are discovered outside the correction period, County shall have all the rights and remedies granted by law.

4. In special circumstances where a part of the Work is occupied by the County or a particular item of equipment is placed in continuous service before final acceptance of all the Work, the correction period for that part of the Work or that item may start to run from an earlier date if so provided by Change Order or Contract Modification. Additionally, for equipment and systems having extended guarantees or warranties beyond the one-year obligation described in Section 1.09.C.3 above, the correction period shall commence on the later of (a) County's actual use of the item for the purpose intended (i.e., not merely for testing, commissioning, etc.), and (b) when County's commissioning agent indicates in writing to the County that the item is ready to be used for the purpose intended.

5. Where defective or rejected Work (and damage to other work resulting therefrom) has been corrected, removed or replaced under this provision after the commencement of the correction period, the correction period hereunder with respect to such Work will be extended for an additional period of the longer of one year after such correction or removal and replacement has been satisfactorily completed or one (1) year after Final Acceptance.

D. ACCEPTANCE AND CORRECTION OF DEFECTIVE WORK BY THE COUNTY

1. If after giving Contractor the opportunity to repair, should it not do so, the County may accept defective Work: If, instead of requiring correction or removal and replacement of defective Work, the County prefers to accept it, the County may do so. Contractor shall pay all claims, costs, losses and damages attributable to the County's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract with respect to Work, unless the parties are unable to agree upon an appropriate decrease in the Contract Sum, in which case the County may deduct from monies due Contractor the amount of any and all claims, costs, losses (including diminution in value), damages, expenses and liabilities attributable to the defective work. If Contractor disagrees with the deduction, the Contractor may make a claim as provided in Section 1.12. If the acceptance occurs after Final Payment, an appropriate amount shall be paid by Contractor as determined by the County.
2. The County may correct defective Work: If Contractor fails within five (5) days after written notice from the County to begin to correct defective work or to begin to remove and replace rejected Work as required by County in accordance with Section 1.09.C.2, or to provide a plan for correction of defective work acceptable to the County, or if Contractor otherwise fails to perform the Work in accordance with Contract, the County may, after seven (7) days written notice to Contractor, correct and remedy any deficiency. In connection with such corrective and remedial action, the County may exclude Contractor from all or part of the Site, take possession of all or part of the Work, and suspend Contractor's work related thereto, take possession of all or part of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work any materials and equipment stored at the Site or for which the County has paid Contractor but which are stored elsewhere. Contractor shall allow the County, its representatives, agents, employees, consultants and other contractors, access to the Site to enable the County to exercise the rights and remedies under this Section 1.09.D.2. All claims,

costs, losses (including diminution in value), damages, expenses and liabilities incurred or sustained by the County in exercising such rights and remedies will be the responsibility of Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract with respect to the Work and the Contract Sum. If the parties are unable to agree on the amount of an appropriate decrease in the Contract Sum, the County may deduct from monies due Contractor all claims, costs, losses (including diminution in value), expenses, damages and liabilities attributable to the defective Work, including all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. If Contractor disagrees with the County's calculation, it may make a claim as provided in Section 1.12 of this Contract.

E. RIGHTS UPON INSPECTION OR CORRECTION

1. The Contractor shall not be allowed an extension of the Contract Time (or any milestones) because of any delay in the performance of the Work attributable to the exercise by the County of its rights and remedies under this Section 1.09. Where the County exercises its rights under this Section 1.09, it retains all other rights it has by law or under the Contract, including but not limited to, the right to terminate Contractor's right to proceed with the Work for cause under the Contract and/or make a claim or back charge where a Change Order cannot be agreed upon.
2. Inspection shall not relieve the Contractor of its obligation to have furnished material and workmanship in accordance with the Contract. Payment for work completed through periodic progress payments or otherwise shall not operate to waive the County's right to require full compliance with the Contract and shall in no way be deemed as acceptance of the Work paid. Contractor's obligation to complete the Work in accordance with the Contract shall be absolute, unless the County agrees otherwise in writing.

F. SAMPLES AND TESTS OF MATERIALS AND WORK

1. Samples or test specimens of all materials to be used or offered for use in connection with the Work shall be prepared at the expense of Contractor and furnished to County in such quantities and sizes as may be required for proper examination, analysis and tests.
2. All samples shall be submitted in ample time to enable County to conduct any tests, analyses or examinations necessary before the time at which it is desired to incorporate the material into the Work.

3. County may refuse consideration of further samples of same brand or make of material or product previously determined as unsatisfactory for testing, analysis or examination.

G. PROOF OF COMPLIANCE WITH CONTRACT PROVISIONS

In order that the County may determine whether Contractor has complied or is complying with requirements of the Contract not readily enforceable through inspection and tests of Work and materials, Contractor shall at any time when requested submit to the County properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.

H. ACCEPTANCE

1. Neither inspection by the County or its authorized agents or representatives, nor any order or certificate for the payment of money, nor any payment, nor acceptance of the whole or any part of the Work by the County, nor any extension of time, nor any verbal statements issued by the County or its authorized agents or representatives shall operate as a waiver of any provisions of this Contract, or of any power herein reserved by the County or any right to damage herein provided, nor shall any waiver of any breach of this Contract be held to be a waiver of any other subsequent breach.
2. When the Contractor gives notice to the County that the Work is substantially complete, unless County determines that the Work is not sufficiently complete to warrant an inspection to determine Substantial Completion, County will inspect the Work, and prepare and give to the Contractor a comprehensive list of items to be completed or corrected before establishing Substantial Completion. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract. The County will make an inspection to determine whether the Work is substantially complete. If County's inspection discloses any item, whether or not included on the list, which must be completed or corrected before Substantial Completion, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. The Contractor shall then submit a request for another inspection by County to determine Substantial Completion. Costs for additional inspection by the County shall be deducted from any monies due and payable to the Contractor.
3. When County determines that the Work is substantially complete, the Contractor will arrange for inspection by the Authority having Jurisdiction (AHJ) and other officials, as appropriate, for the purpose of issuing a Certificate

of Occupancy. After a Certificate of Occupancy has been issued by the AHJ, the Contractor will prepare a Certificate of Substantial Completion which, when signed by the County, shall establish the date of Substantial Completion and the responsibilities of County and Contractor for security, maintenance, utilities, insurance, and damage to the Work.

4. Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee To Repair Period for the Work covered by the Certificate of Substantial Completion, shall commence on the date of Substantial Completion of the Work except that Substantial Completion shall not commence the Guarantee to Repair Period for any equipment or systems that:
 - a. Are not fully operational (equipment or systems shall not be considered fully operational if they are intended to provide service to any portion of the building which the County has neither Beneficial Occupancy nor accepted as Substantially Complete); or
 - b. Are not accepted by the County.
5. The Guarantee to Repair Period for equipment or systems which become fully operational and accepted subsequent to Substantial Completion will begin on the date of their written acceptance by County.

SECTION 1.10 CONTRACTOR'S ORGANIZATION AND EQUIPMENT

A. CONTRACTOR'S LEGAL ADDRESS

See Sections 1.01.C.2 Contractor's Representative and Section 1.17.J Notices.

B. CONTRACTOR'S OFFICE AT THE SITE

Contractor is required to maintain an office at the Site, which office shall be the headquarters of its representative authorized to transmit and receive instructions, Drawings or other communications to and from County. Instructions, Drawings, or other communications given to Contractor's Representative or delivered at the Site office in representative's absence shall be deemed to have been given to Contractor.

C. CONTRACTOR'S SUPERINTENDENTS OR FOREPERSONS

Contractor shall at all times be represented on Site by one or more superintendents or forepersons authorized and competent to receive and carry out any instructions that may be given to them by the County and Contractor shall be liable for faithful observance of instructions delivered to Contractor or to its authorized representative or representatives on Site.

D. PROFICIENCY IN ENGLISH

Supervisors, forepersons, security guards, safety personnel and employees who have unescorted access to the Site must possess proficiency in the English language in order to understand, receive and carry out oral and written communications or instructions relating to their job functions, including safety and security requirements.

E. CONTRACTOR'S AND SUBCONTRACTORS' EMPLOYEES

Contractor shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do Work. If County notifies Contractor that any of its employees, or any of its Subcontractors' employees employed on the Work is incompetent, unfaithful, disorderly or profane, or fails to observe customary standards of conduct or refuses to carry out any provision of the Contract, or uses threatening or abusive language to any person on the Work (including persons representing County), or violates sanitary rules, or is otherwise unsatisfactory, and if County requests that such person be discharged from Work, then Contractor or its Subcontractor shall immediately discharge such person from Work and the discharged person shall not be re-employed on the Work except with consent of County.

F. CONTRACTOR TO SUPPLY SUFFICIENT WORKERS AND MATERIALS

1. Unless otherwise required by the County pursuant to the terms of the Contract, Contractor shall at all times keep on the Site a sufficient amount of equipment and materials and employ a sufficient number of qualified workers to prosecute the Work at a rate and in a sequence and manner necessary to complete the Work herein required within the Contract Time. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type.
2. At any time during progress of Work should Contractor directly or indirectly (through subcontractors) refuse, neglect, or be unable to supply sufficient materials or employ qualified workers to prosecute the Work as required, then County may require Contractor to accelerate the Work and/or furnish additional qualified workers or materials as County may consider necessary, at no cost to County. If Contractor does not comply with the notice within five (5) business days of date of service thereof, County shall have the right (but not the duty) to provide materials and qualified workers to finish the Work or any affected portion of Work, as County may elect. County may, at its discretion, exclude Contractor from the Site, or portions of the Site or separate work elements during the time period that County exercises this right. County will deduct from moneys

due or which may thereafter become due under the Contract, the sums necessary to meet expenses thereby incurred and paid to persons supplying materials and doing Work. County will deduct from funds or appropriations set aside for purposes of Contract the amount of such payments and charge them to Contractor as if paid to Contractor. Contractor shall remain liable for resulting delay, including liquidated damages and indemnification of County from claims of others.

3. Exercise by the County of the rights conferred upon it in Section 1.10.F.2, above, is entirely discretionary on the part of the County. The County shall have no duty or obligation to exercise the rights referred to in Section 1.10.F.2, above, and the failure to exercise such rights shall not be deemed an approval of existing work progress or a waiver or limitation of the County's right to exercise such rights in other concurrent or future similar circumstances. The rights conferred upon the County under Section 1.10.F.2, above, are cumulative to the County's other rights under the Contract including, but not limited to, the County's rights to terminate the Contract.
4. The County may, if it deems necessary for reasons other than as described in Section 1.10.F.2, direct Contractor to accelerate the Work by increasing crew sizes, working overtime (as permitted by law) and/or performing shift work. If directed to perform overtime and/or shift work, Contractor will work said overtime and/or shift work, and the County shall pay Contractor solely for the additional premium wages paid, plus taxes imposed by law on such additional wages and other agreed upon costs related to the acceleration of the work. Unless otherwise directed by the County, accelerated work shall be performed utilizing the most cost-effective available method. For example, the County shall not be responsible to pay the premium for overtime work if the same work could have been performed on second shift utilizing a lower premium.

G. CONTRACTOR TO LIST TRADES WORKING

Contractor shall list the trades working on the Site and their scheduled activities on a daily basis, and provide a copy of that list to County on a daily basis.

H. CONTRACTOR'S USE OF THE SITE

Contractor shall not make any arrangements with any person to permit occupancy or use of any land, structure or building within the limit of the Work, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the County and any owner, former owner or tenant of such land, structure or buildings. Contractor may not occupy County-owned property

outside the limit of the Work as shown on the Drawings unless it obtains prior approval from the County.

SECTION 1.11 PROSECUTION AND PROGRESS OF THE WORK

A. SCHEDULES AND EXAMINATIONS OF AGREEMENT

1. Before undertaking each part of the Work, the Contractor shall carefully study and compare the Contract and check and verify pertinent figures shown thereon, all applicable field and engineering measurements, if any, and all actual conditions. The Contractor shall promptly report in writing to the County any conflict, error, ambiguity or discrepancy which the Contractor may discover in County-provided information and shall obtain a written interpretation or clarification from the County before proceeding with any Work affected thereby.
2. The Contractor shall submit an electronic version in Microsoft Word 2007 or newer or Excel 2007 or newer or Microsoft Project 2000 or newer of an original, plus seven copies, of the following schedules to the County at least five days prior to the pre-construction conference for initial review and discussion:
 - a. Monthly progress schedules and reports.
 - b. Preliminary design schedule and schedule of shop drawings and sample Submittals which will list Contractor's preliminary schedule for completing the project design documents (through release for construction). If no such schedule is agreed upon, then all shop drawings, samples and product data submittals shall be completed and submitted within thirty (30) days after receipt of notice to proceed with construction.
 - c. Preliminary schedule of values for all the Work which will include quantities and prices of items aggregating the Contract Sum and will subdivide each schedule of value into component activities in sufficient detail to serve as the basis for progress payments during construction. Such Schedule of Values will include an appropriate amount of overhead and profit applicable to each item of work, will include a line item for project record documents and a line item for project scheduling, and will conform to the Specifications.
3. Unless otherwise provided in the Contract, at least fifteen (15) days before submission of the first application for payment, a conference attended by Contractor, County, and others as appropriate, will be held to review for acceptability the schedules submitted in accordance with Section 1.11.A.2 of the Contract and first reviewed at the pre-construction conference. Contractor shall schedule this meeting. Contractor shall have an additional

seven (7) days to make corrections and adjustments and to complete and resubmit the schedules. Schedules shall be updated and completed monthly. No progress payment shall be due or owing to Contractor until the schedules are submitted and reasonably acceptable to County and/or County consultants as meeting the requirements of the Contract. County's acceptance of Contractor's schedules will not create any duty of care or impose on County any responsibility for the sequencing, scheduling or progress of Work nor will it interfere with or relieve Contractor from Contractor's full responsibility therefor.

4. Before commencing any portion of the Work, the Contractor shall, to permit proper inspection of the Work and to assure measurements necessary for record and payment, inform the County in writing as to time and place at which the Contractor wishes to commence the Work and the nature of the Work to be done. Information shall be given to the County a reasonable time in advance of the date on which the Contractor proposes to begin Work, so that County may make necessary preliminary work without inconvenience or delay to the Contractor. If the County so requires, the Contractor shall submit weekly, a rolling two (2) week schedule, listing the activities anticipated to be performed along with the dates for which work is expected to be performed.
5. The Contractor shall submit submittals and shop drawings to County for review in accordance with Section 1.05.J. Submission of a drawing shall constitute the Contractor's representation that all requirements of the Contract have been complied with. All submittals will be identified as County may require and in the number of copies specified in this Contract.
6. The Contractor shall not perform any Work requiring submission of a shop drawing or sample or other submittal prior to submission and a favorable review thereof. Where a shop drawing or sample or other submittal is required by the Contract or the final schedule of shop drawing and sample submissions accepted by the County, any related Work performed prior to County's approval of the pertinent submittal will be at the sole expense, responsibility and risk of the Contractor.
7. The Contractor shall utilize the progress schedules in planning, scheduling, coordinating, performing and controlling the Work (including all activities of Subcontractors, assigned contractors, equipment vendors and suppliers). The Contractor shall update the progress schedules on a monthly basis for purpose of recording and monitoring the progress of the Work and evaluating and preparing the Contractor's payments. Contractor's failure to submit and maintain an acceptable progress schedule may, in County's discretion, and without limiting the materiality of Contractor's other obligations under the Contract, constitute grounds to

declare Contractor in material breach of the Contract.

B. LINES AND GRADES

1. Work shall be done to lines and grades established by Contractor at Contractor's cost in accordance with the Contract, unless the County, in its discretion, directs otherwise.
2. At times it may be necessary to discontinue portions of Contractor's work in order for the County to make measurements or surveys without interruptions or other interference that might impair accuracy of results. At any time, upon request of the County, Contractor shall discontinue the Work to such extent as may be necessary for purposes of the County.
3. No payment will be made for cost to Contractor of any work or delay occasioned by establishing or checking lines and grades or making other measurements, or by inspection, and no extension of time will be allowed for such delays.

C. COST DATA

1. Contractor shall maintain full and correct information as to number of workers employed in connection with each subdivision of the Work, classification and rate of pay of each worker in the form of certified payrolls, cost to Contractor of each class of materials, tools and appliances used by Contractor in the Work, and amount of each class of materials used in each subdivision of the Work. Contractor shall provide the County with monthly summaries of this information. If Contractor maintains or is capable of generating summaries or reports comparing actual project costs with Bid estimates or any budgets, it shall provide the County with a copy of such report whenever it is generated or whenever it is requested by or on behalf of the County.
2. Contractor shall maintain daily job reports recording all significant activity on the job, including the number of workers and specific equipment on Site, work activities, work accomplished, problems encountered and delays. Contractor shall provide County with copies for each day Contractor works on the Project, to be delivered to County either the same day or the following morning before starting work at the Site. Contractor shall take weekly progress photographs of all areas of the Work. Contractor shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors. Contractor shall report to the surety promptly upon receiving requests from the surety to provide reporting. Contractor shall provide copies of daily job reports as requested or required by the County or as specified in the Contract.

3. County shall have the right to audit and copy Contractor's books and records of any type, nature or description relating to the Project (including but not limited to financial records reflecting in any way costs claimed on the Project), and to inspect the Site, including Contractor's trailer, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, County shall have the right to inspect and obtain copies of all Contract, planning, design, bid, proposal and negotiation documents, cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job progress reports, photographs, and as-built drawings maintained by Contractor. Contractor shall preserve such books, records, and other items for a period of at least three (3) years from final completion of the Work.
4. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, addenda, Contract Modifications, Work directives, force account orders, and written interpretations and clarifications in good order and annotated to show all changes made during construction. These project record documents, together with all approved samples and a counterpart of all approved shop drawings, shall be maintained and available to County for reference. Upon completion of the Work, Contractor shall deliver to County, the project record documents, samples and shop drawings and as-built drawings. Final payment will not be issued until all project records are delivered to County.
5. County, its agents or designees, shall have the right to inspect all information and documents maintained under this Section 1.11.C at any time during the Project and for a period of five years (5) following Substantial Completion. This right of inspection shall not relieve Contractor of its duties and obligations under the Contract. This right of inspection shall be specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract.

SECTION 1.12 DISPUTES

Section 1.12 DISPUTES

A. General

1. Contract Interpretation Disputes: Should it appear to Contractor that Work to be performed or any of the matters relative to the Contract (including without limitation Drawings or Specifications, if any, provided by County) are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of Contract (including without limitation Drawings or Specifications, if any), Contractor shall first be required to seek an informal resolution to the dispute in accordance with Section 1.12.B. below. Contractor shall bear all costs incurred in giving notice. County will render a determination regarding the issue, which shall be final. If Contractor disagrees with County's decision, or if Contractor contends that County failed to provide a decision, Contractor's sole and exclusive remedy is to file a Claim in accordance with this Section 1.12 Contractor shall diligently prosecute the Disputed Work (as defined below) to final completion pending resolution of any Claim.

2. Work Disputes: If a dispute arises under the Contract respecting the true value of any Work performed, the performance or implementation of Work required by Contract, any Work omitted, any extra Work that Contractor may be required to perform or time extensions, respecting the size of any payment to Contractor during the performance of Contract, or of compliance with Contract procedures, Contractor shall first be required to seek an informal resolution to the dispute in accordance with Section 1.12.B. below. Contractor shall bear all costs incurred in giving notice. County will render a determination regarding the issue, which shall be final. If Contractor disagrees with County's decision, or if Contractor contends that County failed to provide a decision, Contractor's sole and exclusive remedy is to file a Claim in accordance with this Section 1.12 Contractor shall diligently prosecute the Disputed Work (as defined below) pending resolution of any Claim.

3. The claim notice and documentation procedure described in this Section 1.12 applies to all claims and disputes arising under the Contract, including without limitation, any claim or dispute by any Subcontractor or material supplier.

4. A voucher, invoice, proposed change, application for payment, cost proposal, request for information ("RFI"), substitution request, Change Order request, or other routine or authorized form of request for payment is not a claim under the Contract. If such request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a Claim under the Contract by submitting a separate Claim in compliance with claim submission requirements.

5. The provisions of this Section 1.12 survive termination, breach or completion of the Contract, and constitute a claims procedure by agreement under Government Code Section 930.2. Contractor shall bear all costs incurred in the preparation and submission of a Claim.

B. Informal Dispute Resolution Procedure

1. Should any clarification, determination, action or inaction by County or County consultants, Work, or any other event, in the opinion of Contractor, exceed the requirements of or not comply with the Contract, or otherwise result in Contractor seeking additional compensation in time or money for any reason (collectively “Disputed Work”), then Contractor, before commencing the Disputed Work, or within fourteen (14) days after Contractor’s first knowledge of the Disputed Work, whichever is earlier, shall give County written notice thereof and a cost proposal for the Disputed Work stating clearly and in detail its objection and reasons for contending the Work or interpretation is outside the requirements of the Contract. Contractor and County shall make good faith attempts to resolve informally any and all such issues, claims and/or disputes. If a written notice and cost proposal for the Disputed Work is not issued within this time period, or if Contractor proceeds with the Disputed Work without first having given the notice required by this Section 1.12, Contractor shall waive its rights to further claim on the specific issue.

2. County will review Contractor's timely notice and cost proposal for Disputed Work and provide a decision within thirty (30) days. If, after receiving the decision, Contractor disagrees with it or still considers the Disputed Work required of it to be outside of the requirements of the Contract, it shall so notify County, in writing, within fourteen (14) days after receiving the decision by submitting a Notice of Potential Claim, that a formal Claim will be issued. Within thirty (30) days of receiving the decision, Contractor shall submit its Claim in the form specified herein and all arguments, justification, cost or estimates, schedule analysis, and detailed documentation supporting its position. Contractor's failure to furnish notification within fourteen (14) days and all justifying documentation within thirty (30) days will result in Contractor waiving its right to the subject Claim. Claims or claim updates stating that damages, total damages (direct and indirect), schedule input and/or any time extension will be determined at a later date shall not comply with this Section 1.12.B. and shall result in Contractor waiving its Claim(s).

3. Claims shall be calculated in the same manner as Change Orders. EXCEPT WHERE PROVIDED BY LAW, OR ELSEWHERE IN THIS CONTRACT (IF APPLICABLE), COUNTY SHALL NOT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES, AND CLAIMS SHALL NOT INCLUDE SPECIAL OR CONSEQUENTIAL DAMAGES.

4. If Contractor fails to file a Claim within the time required by Section 1.12.B.1, then Contractor’s sole remedy is to file an application for leave to file a late claim pursuant to Government Code section 930.4.

C. Claim Format

All Claims must be in writing and sent to County by registered or certified mail, return receipt requested. The Claim submitted by Contractor shall include, but not be limited to, the following: (a) A cover letter and certification under penalty of perjury of the accuracy of the contents of the Claim; (b) A summary of the Claim including underlying facts, entitlement, schedule analysis, quantum calculations and Contract provisions supporting relief; (c) A list of documents relating to the Claim including Specifications, Drawings, Requests for Clarification/RFIs, schedules, notices of delay, cost calculations and spreadsheets, and any other relevant documents; (d) A chronology of events and correspondence; (e) An analysis of Claim merit; (f) An analysis of Claim cost; and (g) All supporting documents referenced in (c).

D. Reserved.

E. Exclusive Remedy

Contractor's performance of its duties and obligations specified in this Section 1.12 and submission of a Claim as provided in this Section 1.12 is Contractor's sole and exclusive remedy for disputes of all types pertaining to the payment of money, extension of time, the adjustment or interpretation of Contract terms or other contractual or tort relief arising from Contract. This exclusive remedy and the limitation of liability (expressed herein and elsewhere throughout Contract) apply notwithstanding the completion, termination, suspension, cancellation, breach or rescission of the Work or Contract, negligence or strict liability by County, its representatives, consultants or agents, or the transfer of Work or the Project to County for any reason whatsoever. Contractor waives all claims of waiver, estoppel, release, bar, or any other type of excuse for non-compliance with the claim submission requirements. Compliance with the notice and claim submission procedures described in Section 1.12 is a condition precedent to the right to commence litigation, file a Government Code Claim, or commence any other legal action. If Contractor fails to raise any claim(s) or issue(s) in a timely protest and timely claim submitted under this Section 1.12, then Contractor may not thereafter assert such claims(s) or issue(s) in any Government Code Claim, subsequent litigation, or legal action. County shall not be deemed to have waived any provision under this Section 1.12, if at County's sole discretion, a claim is accepted in a manner not in accord with this Section 1.12.

F. Actions by County Upon Receipt of Claim

1. Upon receipt of a Claim, County shall conduct a reasonable review of the Claim and, within a period not to exceed forty-five (45) days, shall provide Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed.

2. County and Contractor may, by mutual written agreement, extend the time periods provided in this Section 1.12.

3. If County needs approval from the Board of Supervisors to provide Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the Board does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of a Claim, County shall have up to three (3) days following the next duly publicly noticed meeting of the governing body after the forty-five (45) day period, or extension, expires to provide Contractor a written statement identifying the disputed portion and the undisputed portion.

G. Payment or Failure to Pay Undisputed Portion of Claim

Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after County issues its written statement. If County fails to issue a written statement within the time required, the Claim will be deemed rejected in its entirety. A Claim that is denied by reason of County's failure to have responded to the Claim, or its failure to otherwise meet the time requirements of this Section 1.12, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of Contractor.

H. Contractor's Dispute of Written Statement

If Contractor disputes County's written statement, or if County fails to respond to a Claim issued pursuant to this Section 1.12 within the time prescribed, Contractor may within thirty (30) days from the date of County's response or, if no response was provided, from the date a response was due, demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered or certified mail, return receipt requested, County shall schedule a meet and confer conference to be held within thirty (30) days to further discuss settlement of the dispute.

I. Written Statement by County After Meet and Confer Conference

Within ten (10) business days following the conclusion of the meet and confer conference or if no meet and confer conference was requested, by the conclusion of the meet and confer period, if the Claim or any portion of the Claim remains in dispute, County shall provide Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after County issues its written statement.

J. Nonbinding Mediation

1. Following the conclusion of the meet and confer process, Contractor must within thirty (30) days identify in writing any portion of the Claim remaining in dispute for submission to nonbinding mediation. Contractor's failure to identify a portion of the Claim remaining in dispute shall be deemed an agreement on Contractor's part with County's written statement provided pursuant to Section 1.12.F. County and Contractor shall share the associated costs of the nonbinding mediation equally. County and Contractor shall mutually agree to a mediator within ten (10) business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

2. Mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Section 1.12.

3. If mediation is unsuccessful, Contractor may pursue other remedies available at law as to the parts of the Claim remaining in dispute. For Claims involving disputed amounts below three hundred seventy-five thousand dollars (\$375,000), County and Contractor agree that resubmission, review and informal resolution of the Claim pursuant to Public Contract Code Section 20104 et seq. shall not be required.

4. Unless otherwise agreed to by County and Contractor in writing, the mediation conducted pursuant to this Section 1.12 shall excuse any further obligation under Section 20104.4 of the Public Contract Code to mediate after litigation has been commenced.

5. The Claim resolution procedures in this Section 1.12 do not preclude County from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation does not resolve the parties' dispute. County may initiate arbitration by submitting a Request for Arbitration to Contractor in writing. Failure of Contractor to participate in required arbitration shall be deemed a waiver of the amounts in dispute.

K. Amounts Not Paid Timely

Amounts not paid in a timely manner as required by this Section 1.12 shall bear interest at 7 percent per annum from the date payment was due.

L. Subcontractor Claims

If a Subcontractor or a lower tier subcontractor lacks legal standing to assert a Claim against County because privity of contract does not exist, Contractor may present to County a Claim on behalf of a Subcontractor or lower tier subcontractor. A Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier subcontractor, that Contractor present a Claim for Work which was performed by the Subcontractor or by a lower tier subcontractor on behalf of the Subcontractor. The Claim submitted by the Subcontractor shall comply with the requirements of Section 1.12.C above. Within forty-five (45) days of receipt of this written request, Contractor shall notify the Subcontractor in writing as to whether Contractor presented the Claim to County and, if Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so. Nothing in this Section 1.12 shall be deemed to make the Subcontractor or lower tier subcontractor a third-party beneficiary of this Contract, require payment of any funds to the Subcontractor or lower tier subcontractor by County, or excuse any noncompliance with the stop payment requirements set forth in the Civil Code Section 9000 et seq. If County elects to make payment directly to the Subcontractor or lower tier subcontractor whose Claim for Work is presented to County by Contractor, Contractor waives and releases any Claim it may have for funds paid to the Subcontractor or lower tier subcontractor by County.

M. Compliance

1. The provisions of this Section 1.12 constitute a non-judicial Claim settlement procedure that, pursuant to Section 930.2 of the California Government Code, shall constitute a condition precedent to submission of a valid Claim under the California Government Code. Contractor shall bear all costs incurred in the preparation, submission and administration of a Claim. Any Claims presented in accordance with the Government Code must affirmatively indicate Contractor's prior compliance with the Claims procedure herein and the previous dispositions of the Claims asserted. Pursuant to Government Code Section 930.2, the one (1) year period in Government Code Section 911.2 shall be reduced to one hundred and fifty (150) days from either accrual of the cause of action, substantial completion or termination of the Contract, whichever occurs first; in all other respects, the Government Code shall apply unchanged.

2. Failure to submit and administer Claims as required in this Section 1.12 shall waive Contractor's right to Claim on any specific issues not included in a timely submitted Claim. Claim(s) or issue(s) not raised in a timely protest and timely Claim submitted under this Section 1.12 may not be asserted in any subsequent meet and confer conference, mediation, arbitration, Government Code Claim, or legal action.

3. County shall not be deemed to waive any provision under this Section 1.12, if at County's sole discretion, a Claim is administered in a manner not in accord with this Section 1.12. Waivers or modifications of this Section 1.12 may only be made through a signed Change Order approved as to form by legal counsel for both County and Contractor; oral or implied modifications shall be ineffective.

N. Filing of Government Code Claims

If Contractor still remains unsatisfied and desires to preserve its right to pursue the matter further, Contractor must then file a Claim with County, pursuant to Government Code Sections 900 et seq. or Sections 910, et seq.

SECTION 1.13 LEGAL AND MISCELLANEOUS

A. COMPLIANCE WITH LAWS AND REGULATIONS

1. Contractor shall keep fully informed of and shall comply with all statutes, laws, ordinances, codes, rules, regulations and orders of any properly constituted authority affecting the Work and persons connected with Work, and shall protect and indemnify the County and its officers, employees, consultants and agents against any claim or liability, including attorney's fees, arising from or based on violation of any statutes, laws, ordinances, codes, rules, regulations or orders, whether by Contractor or by Subcontractors, employees or agents. Authorized persons may at any time enter upon any part of the Work to ascertain compliance of all applicable statutes, laws, ordinances, codes, rules, regulations and orders.
2. Contractor's Permits and License. Contractor certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to the County, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all applicable statutes, ordinances, and regulations, or other laws, that may apply to performance of work hereunder. County may reasonably request and review all such applications, permits, and licenses.
3. Equal Opportunity. Contractor shall comply with the provisions of Title VII of the Civil Rights Act of 1964 in that Contractor shall not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment nor shall Contractor discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.
4. Affirmative Action. If Contractor employs 15 or more full-time permanent employees, Contractor shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated

herein by reference. A copy of this Affirmative Action Program will be furnished by the COR upon request or may be obtained from the County of San Diego Internet web-site (www.sdcountry.ca.gov).

5. Drug and Alcohol-Free Workplace. In Board of Supervisors' Policy C-25, County of San Diego Drug and Alcohol Use Policy, the Board of Supervisors recognized that those who perform services or work for County under contract should perform the services or work as safely, effectively and efficiently as possible.
 - a. Contractor and Contractor's employees, while performing work for the County, or while using County equipment:
 - (i) Shall not be in any way impaired because of being under the influence of alcohol or a drug.
 - (ii) Shall not possess, consume or be under the influence of alcohol and/or an illegal drug.
 - (iii) Shall not sell, offer, or provide alcohol or an illegal drug to another person.
 - b. Section 1.13.A.5 is a material condition of this Contract. If the Contracting Officer determines that Contractor and/or Contractor's employee(s) has not complied with Section 1.13.A.5, County may terminate this Contract for default and may also terminate any other Contract Contractor has with County.
6. Board of Supervisors' Policies. Contractor represents that it is familiar with, and shall use its best efforts to comply with, the following policies of the Board of Supervisors: Board Policy B-67, which encourages the County's contractors to use products made with recycled materials, reusable products, and products designed to be recycled; and Board Policies B-53 and B-39a, which encourage the participation of small and disabled veterans' business enterprises in County procurements. Board of Supervisors Policies are available on the County of San Diego web site.
7. Cartwright Act. Following receipt of final payment under the Contract, Contractor assigns to County all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 1 of Part 2 of Division 7 of the Business and Professions Code, commencing with section 16700), arising from purchases of goods, materials, or work by the Contractor for sale to County under this Contract.
8. Hazardous Materials. Contractor shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices, and training. Contractor

shall not store any Hazardous Materials on any County property for more than 90 days or in violation of the applicable site storage limitations imposed by Environmental Law. At its sole expense, Contractor shall take all actions necessary to protect third parties, including, without limitation, employees and agents of County, from any exposure to Hazardous Materials generated or utilized in Contractor's performance under this Contract. Contractor shall report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify the County of it. Contractor shall not be liable to County for County's failure to comply with, or for County's violation of, any Environmental Law. As used in this section, the term "Environmental Laws" means any and all federal, State and local laws, ordinances, rules, decrees, orders, regulations or court decisions (including the "common law"), relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions or other similar substances or conditions. One such law is the Resource Conservation and Recovery Act. As used in this section, the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws; or (d) is any other material or substance for which there may be any liability, responsibility or duty on County or Contractor with respect to any third person under any Environmental Laws.

9. Debarment and Suspension. Contractor certifies that it, its principals, its employees and its Subcontractors:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any State or federal department or agency.
 - b. Have not within a 3-year period preceding this Contract been convicted of, or had a civil judgment rendered against them for, the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction; violation of federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, State, or local) with

commission of any of the offenses enumerated in the paragraph above; and

- d. Have not within a 3-year period preceding this Contract had one or more public transactions (federal, State, or local) terminated for cause or default.
10. To the extent applicable in design-build projects, whenever the Drawings and Specifications require larger sizes or higher standards than are required by any applicable law, ordinance, regulation or order, the Drawings and Specifications shall govern. Whenever the Drawings and Specifications require something, which would violate such laws, ordinances, regulations or orders, then such laws, ordinances, regulations or orders shall govern.
11. During excavation or at any other time that evidence of any archaeological artifacts, human burial remains, or unique paleontology is found, the Contractor shall immediately cease work and notify the County verbally and in writing.

The Contractor shall grant the County forty-eight (48) hours to evaluate the archaeological evidence. The Contractor will be granted an extension of time and will not be assessed with liquidated damages or any penalties for the forty-eight (48) hour period of this provision. The Contractor shall have no claim for any additional damage or compensation due to this delay.

For additional time, beyond the forty-eight (48) hours, required by the County to pursue any action relative to the archaeological aspects of the site, the Contractor will be granted an appropriate time extension and shall receive additional compensation as provided in this Contract.

B. PERMITS AND TAXES

- 1. Contractor shall procure all permits and licenses applicable to the Work (including environmental matters to the extent applicable), pay all charges and fees, including fees for street opening permits, comply with, implement and acknowledge effectiveness of all permits, initiate and cooperate in securing all required notifications or approvals therefore, and give all notices necessary and incident to due and lawful prosecution of the Work, unless otherwise provided herein. The Contractor will pay applicable building permit, school, sanitation and water fees except as otherwise provided in the Contract, without markups or any increase in the Contract Sum. Contractor shall pay all sales and/or use taxes levied on materials, supplies, or equipment purchased and used on or incorporated into the Work, and all other taxes properly assessed against equipment or other property used in connection with the Work, without any increase in

the Contract Sum. Contractor shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads and other works in advance of operations, even where the County may have already obtained permits for the Work.

2. Contractor will be responsible for any documentary, excise, stamp and transfer taxes and any sales, use or other taxes imposed by reason of the design, delivery, sale, transfer, or installation of Work (or any item of the Work) regardless of which party has liability for such tax under applicable law, and any deficiency, interest or penalty asserted with respect thereto. Contractor represents that it has, or will obtain prior to the transfer of title of Work (or any portion of the Work) the necessary seller's permit as required by the State of California. Contractor represents that it will collect, report, and pay all sales or use taxes to the State Board of Equalization. Upon full payment Contractor will issue the County a receipt pursuant to California Revenue and Taxation Code Section 6203, relieving County of all liability for any tax relating to the Work or any item of the Work.

C. NOTICE OF CONCEALED OR UNKNOWN CONDITIONS

1. If either of the following conditions is encountered at the Site when digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall give a written notice of differing site conditions to the County promptly before conditions are disturbed (except in an emergency as required by Section 1.16.D), and in no event later than seven (7) days after first observance of (a) subsurface or latent physical conditions which differ materially from those indicated in the Contract; (b) unknown physical conditions of an unusual nature or which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
2. In response to Contractor's written notice of differing site conditions under Section 1.13.C.1, the County will investigate the identified conditions, and if they differ materially and cause increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, the County will issue either a request for proposal or a Change Order under the procedures described in the Contract.
3. If the County determines that physical conditions at the Site are not latent or are not materially different from those indicated in the Contract or that no change in terms of the Contract is justified, the County shall so notify Contractor in writing, stating reasons. If the County and Contractor do not agree on an adjustment in Contract Sum or Contract Times, Contractor shall proceed with the Work as directed by the County and may file a

claim as provided in Section 1.12 of the Contract.

4. Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed latent or materially different Site conditions, whether above or below grade if (a) Contractor knew of the existence of such conditions at the time Contractor submitted its Bid; or (b) Contractor should have known of the existence of such conditions as a result of performing contractor directed site investigation and having complied with the requirements of the Contract, including without limitation Sections 1.01 and 1.08.D of this Contract; or (c) the information or conditions claimed by Contractor to be latent or materially different consist of information, conclusions, opinions or deductions of the kind the Contract, including without limitation Section 1.01 of this Contract preclude reliance upon; or (d) Contractor was required to give written notice of differing site conditions under the Contract and failed to do so within the time required.
5. If the County and Contractor are unable to agree on entitlement to or as to the amount or length of any adjustment in the Contract Sum or Contract Time required under this Section 1.13.C, Contractor shall proceed with the Work as directed by County and may make a claim as provided in Section 1.12 of the Contract.

D. NOTICE OF HAZARDOUS WASTE OR MATERIALS CONDITIONS

1. Written notice of hazardous materials condition by Contractor shall be given to the County promptly, before any of the following conditions are disturbed (except in an emergency as required by Section 1.16.D below), and in no event later than 24 hours after first observance, of any (a) material that Contractor believes may be material that is hazardous waste or hazardous material, as defined in Section 25117 of the Health and Safety Code (including, without limitation, asbestos, lead, PCBs, petroleum and related hydrocarbons, and radioactive material) that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law (“hazardous materials”); (b) other material which may present a substantial danger to persons or property exposed thereto in connection with Work at the Site (“other materials”).
2. Except as otherwise provided in the Contract or as required by applicable law, Contractor shall not be required to give any notice for the disturbance or observation of any such hazardous materials or other materials where such matter is disturbed or observed as part of the scope of Work under the Contract (such as hazardous waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of

Work under the Contract), where Contractor complies with all requirements in the Contract and applicable law respecting such materials.

3. Contractor's written notice of hazardous materials conditions under Section 1.13.D.1 above shall indicate whether the hazardous materials or other materials were shown or indicated in the Contract to be within the scope of work, and whether the hazardous materials or other materials were brought to the Site by Contractor, its Subcontractors, suppliers, or anyone else for whom Contractor is responsible.
4. Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed hazardous waste or materials if (1) Contractor knew of the existence of such hazardous materials or other materials at the time Contractor submitted its bid; or (2) Contractor should have known of the existence of such hazardous materials or other materials pursuant to Contractor's due diligence required under Sections 1.01 and 1.08; or (3) Contractor failed to give the written Notice of Hazardous Materials Conditions within the time required by Section 1.13.D.1 of this Contract. Notwithstanding (1) and (2) above, Contractor may (subject to (3) above) be entitled to adjustment in the Contract Sum or Time regarding claimed hazardous waste or materials if not reasonably discernible from the reports and information provided by County, other information reasonably available to Contractor, visual observation or reasonable investigation. If the County determines that conditions do involve hazardous materials or other materials or that change in Contract terms is justified, then the County will either issue a Request for Proposal or an appropriate Change Order under the procedures described in the Contract.
5. If the County determines that conditions do not involve hazardous materials or other materials or that no change in Contract terms is justified, the County shall notify Contractor in writing, stating the reasons for its determination. If the County and Contractor cannot agree on any claimed adjustment in Contract Sum or Contract Time, Contractor shall proceed with the Work and as directed by the County and may file a claim as provided in Section 1.12.
6. If the Contractor does not agree to resume work based on a reasonable belief that it is unsafe, or does not agree to resume work under special conditions, the County may order the disputed portion of work deleted from the Work, or performed by others, or the County may invoke its right to terminate Contractor's right to proceed under the Contract in whole or in part for convenience or for cause as the facts may warrant. If Contractor does not agree with the County's determination of any adjustment in the Contract Sum or Times as a result, Contractor may make a claim as

provided in Section 1.12.

E. SUSPENSION OF WORK

The County may, without cause, order Contractor in writing to suspend, delay or interrupt Work in whole or in part for such period of time as the County may determine. An adjustment shall be made for increases in cost of performance of the Contract caused by any such suspension, delay or interruption. No adjustment shall be made to the extent: (a) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or (b) that an equitable adjustment is made or denied under another provision of the Contract; or (c) that the suspension of work was the direct or indirect result of Contractor's failure to perform any of its obligations hereunder. Adjustments made in cost of performance may have a mutually agreed fixed or percentage fee; if the parties cannot agree, Contractor may file a claim under Section 1.12 herein.

F. TERMINATION OF CONTRACT FOR CAUSE AND WRITTEN ASSURANCES OF PERFORMANCE

1. Contractor shall be in default of this Contract and the County may terminate Contractor's right to proceed under the Contract, for cause, if:
 - a. Contractor makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudged a bankrupt or insolvent, is the subject of an involuntary petition in bankruptcy which is not dismissed within 60 days, files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, files any answer admitting or not contesting the material allegations of a petition filed against Contractor in any such proceeding, or seeks, consents to, or acquiesces in, the appointment of any trustee, receiver, custodian or liquidator of Contractor or of all or any substantial part of the properties of Contractor, or if Contractor, its directors or shareholders, take action to dissolve or liquidate Contractor; or
 - b. Contractor commits a material breach of the Contract. If County declares Contractor in default due to material breach, however, County must allow Contractor an opportunity to cure such breach within ten (10) days of the date of notice from County to Contractor providing notice of the default; or, if such breach is curable but not curable within such ten-day period, within such period of time as is reasonably necessary to accomplish such cure promptly. (In order for Contractor to avail itself of a time period in excess of ten (10) days, Contractor must provide County within the

- ten- (10) day period with a written plan acceptable to County to cure said breach promptly which includes, for example, evidence of necessary resources, subcontractor commitments, schedules and recovery schedules meeting Contract requirements and showing a realistic and achievable plan to cure the breach promptly. Contractor must then diligently commence and continue such cure according to the written plan); or
- c. Contractor violates or allows a violation of any law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency applicable to the Project or Work and does not cure such violation within ten (10) days of the date of the notice from the County to Contractor demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to promptly accomplish such cure. (In order for Contractor to avail itself of a time period in excess of ten (10) days, Contractor must provide the County within the ten (10) day period with a written plan to cure said violation acceptable to the County, and then diligently commence and continue performance of such cure according to the written plan).
2. If the County at any time reasonably believes that Contractor is or may be in default under its Contract, as provided in Section 1.13.F.1 of this Contract, the County may in its sole discretion notify Contractor of this fact and request written assurances from Contractor of performance of the Contract and a written plan from Contractor to remedy any failures to perform the terms of the Contract which the County may advise the Contractor of in writing. Contractor shall, within ten (10) days of the County's request, deliver a written cure plan which meets the requirements of the written plan deliverable under Section 1.13.F.1.b of this Contract. Failure of the Contractor to provide written assurances of performance and the required written plan will constitute a material breach of this Contract sufficient to invoke Section 1.13.F.1.b above.
3. In the event of termination for cause, the County shall immediately serve written notice thereof upon surety and Contractor. Surety shall have the rights and obligations set forth in the Performance Bond. Subject to the surety's rights under the Performance Bond attached hereto as Exhibit D (which rights are waived upon a default under the Performance Bond), the County may, at its sole option take over the Work and prosecute it to completion by contract or by any other methods it may deem advisable, or require the surety to prosecute the Work to completion.
4. In the event of termination for cause by the County as provided in Section 1.13.F.1 of this Contract,

- a. The County may, in its sole discretion, offset any payment due to Contractor by any amount County reasonably believes is necessary to compensate it for Contractor's material breach. County shall not compensate Contractor for its costs in terminating the Work or any cancellation charges owed to third parties;
 - b. County may take any other action to which it is entitled in law or equity;
 - c. Contractor shall deliver within three (3) business days to the County possession of the Work in its then condition, including but not limited to, all designs, engineering, project records, cost data of all types, Drawings and Specifications and contracts with vendors and Subcontractors, and all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. The Contractor shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract. The provisions of this Section 1.13.F.4 shall not be interpreted to diminish any right which the County may have to claim and recover damages for any breach of this Contract, but rather, Contractor shall compensate the County for all loss, cost, damage, expense, and/or liability suffered by the County as a result of such termination and the circumstances upon which such termination is based.
 - d. County's rights under Section 1.13.F.4 shall be specifically enforceable to the greatest extent permitted by law. County shall, to the extent applicable, have all other rights and remedies set forth in the Contract.
5. County may terminate portions or parts of the Work for cause, provided these portions or parts (1) have separate geographic areas from parts or portions of the Work not terminated or (2) are limited to the work of one or more specific trades or Subcontractors. In such case, Contractor shall cooperate with a completing contractor as required under Section 1.06 of this Contract.
6. In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Contractor shall have only the recovery rights specified in Section 1.13.G (Termination of Contract for Convenience.) Any Contractor claim arising out of a termination for cause, however, shall be made in accordance with Section 1.12 of this Contract. No other loss cost, damage, expense or liability may be claimed,

requested or recovered by Contractor.

G. TERMINATION OF CONTRACT FOR CONVENIENCE

1. The County may terminate performance of the Work under the Contract in accordance with this clause in whole, or from time to time in part, whenever the County shall determine that termination is in the County's best interest as solely determined by the County. Termination shall be effected by the County delivering to the Contractor notice of termination specifying the extent to which performance of the Work under the Contract is terminated, and the effective date of the termination.
2. After receiving a notice of termination under Section 1.13.G.1 above, and except as otherwise directed by the County, the Contractor shall:
 - a. Stop Work under the Contract on the date and to the extent specified in the notice of termination;
 - b. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of Work under the Contract which is not terminated;
 - c. Terminate all orders and subcontracts to the extent that they relate to performance of Work terminated by the notice of termination;
 - d. Assign to the County in the manner, at the times, and to the extent directed by the County, all right, title, and interest of the Contractor under orders and subcontracts so terminated. The County shall have the right, in its sole discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 - e. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of the County to extent the County may require. The County's approval or ratification shall be final for purposes of this Section 1.13.G of this Contract;
 - f. Transfer title to the County, and deliver in the manner, at the times, and to the extent, if any, directed by the County, all fabricated or unfabricated parts, Work in process, completed Work, supplies, and all other material produced as part of, or acquired in connection with performance of, Work terminated by the notice of termination, and completed or partially completed drawings, specifications, information, and other property which, if the Project had been completed, would have been required to be furnished to the County;
 - g. Use its best efforts to sell, in manner, at times, to extent, and at price or prices that the County directs or authorizes, any property of types referred to in Section 1.13.G.2.f above, but the Contractor

shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at price or prices approved by the County. Proceeds of transfer or disposition shall be applied to reduce payments to be made by the County to the Contractor under the Contract or shall otherwise be credited to the price or cost of Work covered by the Contract or paid in such other manner as the County may direct;

- h. Complete performance of the part of the Work which was not terminated by the notice of termination;
- i. Take such action as may be necessary, or as the County may direct, to protect and preserve all property related to the Contract which is in the Contractor's possession and in which the County has or may acquire interest.
- j. Deliver within three (3) business days to the County possession of the Work in its then condition, including but not limited to, all designs, engineering, project records, cost data of all types, and Drawings and Specifications.

3. After receipt of a notice of termination under Section 1.13.G.1, the Contractor shall submit to the County its termination claim, in form and with all certifications required by the Contract. The Contractor's termination claim shall be submitted promptly, but in no event later than two (2) months from the effective date of the termination. The Contractor and the County may agree upon the whole or part of the amount or amounts to be paid to the Contractor because of a total or partial termination of Work under this Section. If the Contractor and the County fail to agree on the whole amount to be paid to the Contractor because of the termination of the Work under this Section 1.13.G, County's liability to Contractor by reason of the termination shall be the total (without duplication of any items) of:

- a. The reasonable cost to Contractor, without profit, for all Work performed prior to the effective date of the termination, including Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the progress schedule and the schedule of values. Deductions shall be made for cost of materials to be retained by Contractor, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits against cost of Work. Reasonable cost will include reasonable allowance for Project overhead and general administrative overhead. When, in County's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with

requirements of the Contract and excessive actual cost shall be disallowed.

- b. When, in the County's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of the Contract and excessive actual cost shall be disallowed.
- c. A reasonable allowance for profit on cost of Work performed as determined under Section 1.13.G.3.a provided that the Contractor establishes to the County's satisfaction that the Contractor would have made a profit had the Project been completed.
- d. Reasonable costs to the Contractor of handling material returned to vendors, delivered to the County or otherwise disposed of as directed by the County.
- e. A reasonable allowance for the Contractor's internal administrative costs in preparing termination claim.
- f. The County shall have no obligation to pay the Contractor under this Section 1.13.G unless and until the Contractor provides the County with updated and acceptable as-builts and Project record documents for Work completed prior to termination.

In no event shall the County be liable for costs incurred by the Contractor or Subcontractors after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety costs of any type, costs of preparing and submitting the Contractor's bid, attorney's fees of any type and all other costs relating to prosecution of claim or lawsuit.

- 4. In arriving at the amount due the Contractor under this clause there shall be deducted in whole or in the appropriate part(s) if the termination is partial:
 - a. All unliquidated advances or other payments on account previously made to the Contractor, including without limitation all payments which are applicable to the terminated portion of the Contract,
 - b. Any claim which the County may have against the Contractor in connection with the Contract, and
 - c. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by the Contractor or sold under provisions of Section 1.13.G, and not otherwise recovered by or credited to the County.

H. CONTINGENT ASSIGNMENT OF SUBCONTRACTS

The Contractor hereby assigns to the County each Subcontract for a portion of the Work, provided that:

1. The assignment is effective only after the County's termination of the Contractor's right to proceed under the Contract (or portion thereof relating to that Subcontract) pursuant to Sections 1.13.F or 1.13.G above;
2. The Assignment is effective only for the Subcontracts which the County expressly accepts by notifying the Subcontractor in writing;
3. The assignment is subject to the prior rights, if any, of the surety, obligated by the Performance Bond provided under the Contract, where the surety exercises its rights to complete the Contract;
4. After the effectiveness of an assignment, the Contractor shall, at its sole cost and expense (except as otherwise provided in Sections 1.13.F or 1.13.G above), sign all instruments and take all actions reasonably requested by the County to evidence and confirm the effectiveness of the assignment in the County; and
5. Nothing in this Section 1.13.H shall modify or limit any of the Contractor's obligations to the County arising from acts or omissions occurring before the effectiveness of any Subcontract assignment, including but not limited to all defense, indemnity and hold harmless obligations arising from or related to the assigned Subcontract.

I. REMEDIES AND CONTRACT INTEGRATION

1. Subject to the Contract provisions regarding Contractor claims, claim review, and claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all claims, counter-claims, disputes and other matters in question between County and Contractor arising out of or relating to the Contract, any breach thereof or the Project, shall be decided in the applicable court of competent jurisdiction located in the State of California, County of San Diego. All County remedies provided in the Contract shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances County shall have any and all other equitable and legal rights and remedies which it would have according to law.
2. In any proceeding to enforce the Contract, Contractor and County agree that the finder of fact shall receive detailed instructions on the meaning

and operation of the Contract, including their conditions, limitations of liability and remedies clauses, claims procedures and any other provisions impacting major defenses and theories of liability of the parties. Detailed findings of fact shall be requested, to verify Contract enforcement.

3. The Contract, and any Contract Modifications, shall represent the entire and integrated agreement between the County and Contractor regarding the subject matter of this agreement and shall constitute the exclusive statement of the terms of the parties' agreement.
4. The Contract, and any Contract Modifications, shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of this agreement or written modifications. The County and Contractor represent and agree that they are entering into this contract and any subsequent written modification in sole reliance upon the information set forth in the Contract or Contract Modifications and the parties are not and will not rely on any other information.

J. INTELLECTUAL PROPERTY

1. Patents. Fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof are included in the Contract Sum.
2. The engineering analysis, Drawings and Specifications for the Project that are prepared pursuant to this Contract are and shall remain the property of the County. Contractor hereby does and shall cause all Subcontractors and others who prepared such design documents for the Project to transfer, convey, and assign to the County all rights throughout the world in the nature of copyright and trademark in and to all versions of such design documents, including but not limited to the Contract, but only to the extent such materials apply to County and/or to the Project. The County shall have the right to distribute, copy or to cause the distribution and copying of such drawings and specifications to third parties as may reasonably be necessary in connection with the Project.
3. Any and all artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created by Contractor or its Subcontractors or designers in connection with services performed under this Contract shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the County. In the event that it is ever determined that any works created by Contractor or its Subcontractors or designers under this Contract are

not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the County. With the prior written approval of the County, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

4. Contractor shall defend, indemnify and hold harmless County and each of its officers, employees, consultants (including without limitation County consultants) and agents, including, but not limited to, elected officials, from all damages, claims for damages, costs or expenses in law or equity, including attorney's fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract or any Drawings, Specifications or Submittals provided under the Contract infringe on the patent rights, copyright, trade name, trademark, service mark, trade secret or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which Contractor agrees to indemnify and hold harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnitee or ordered by a court or administrative body of any competent jurisdiction.

K. SUBSTITUTION FOR PATENTED AND SPECIFIED ARTICLES

Except as noted specifically in the Specifications, whenever in the Specifications, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or equal" and Contractor may offer any substitute material or process that Contractor considers equal in every respect to that so designated and if material or process offered by Contractor is, in opinion of County, equal in every respect to that so designated, its use will be approved. However, Contractor may utilize this right only by submitting to the COR a substitution request with supporting documentation and receiving approval in the form of a Field Change prior to substituting the item. A substitution will be approved only if it is a true "equal" item in every aspect of its design and quality, including but not limited to its dimensions, weights, service requirements, lifecycle costs, durability, compatibility with existing facilities or operations, functioning, impact on contiguous construction elements, overall schedule, and design.

L. CONFLICTS OF INTEREST; CONTRACTOR'S CONDUCT

1. Conflicts of Interest. Contractor represents that it presently has no interest including, but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict

in any manner or degree with the performance of work required under this Contract. Contractor shall not employ any person having any such interest in the performance of this Contract.

2. Conduct of Contractor; Privileged Information.
 - a. Throughout the term of this Contract, Contractor shall inform County of all of Contractor's interests, if any, which are, or which the Contractor believes to be, incompatible with any interests of the County.
 - b. Contractor shall not accept any gratuity or special favor from individuals or organizations with whom Contractor is doing business or proposing to do business, in accomplishing the work under this Contract.
 - c. Contractor shall not use for personal gain or make other improper use of confidential information which is acquired in connection with this Contract. The term "confidential information" includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of the individuals; anticipated materials requirements or pricing actions; and knowledge of selection of a contractor in advance of official announcement.
 - d. Contractor shall not directly or indirectly offer or give any gift, gratuity, or favor to any County employee.

3. Prohibited Contracts. Contractor certifies that this Contract does not violate County Administrative Code section 67, and that Contractor is not, and will not subcontract with, any of the following:
 - a. Persons employed by County or public agencies for which the Board of Supervisors is the governing body.
 - b. Profit-making firms or businesses in which employees described in Section 1.13.L.3.a serve as officers, principals, partners, or major shareholders;
 - c. Persons who, within the immediately preceding 12 months came within the provisions of Section 1.13.L.3.a and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the Contract, or (2) participated in any way in developing the Contract or its service specifications; and
 - d. Profit-making firms or businesses in which the former employees described in Section 1.13.L.3.c serve as officers, principals, partners, or major shareholders.

4. California Political Reform Act and Government Code Section 1090 *et seq.* Contractor acknowledges that the California Political Reform Act

("Act"), Government Code section 81000 *et seq.*, provides that Contractors hired by a public agency, such as County, may be deemed to be a "public official" subject to the Act if the Contractor advises the agency on decisions or actions to be taken by the agency. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. To the extent the Act applies to Contractor, Contractor shall abide by the Act. In addition, Contractor acknowledges and shall abide by the conflict of interest restrictions imposed on public officials by Government Code section 1090 *et seq.*

5. Public Disclosure of Gifts and Campaign Contributions. Contractor represents that this Contract has been executed with full knowledge of, and in compliance with, public disclosure requirements and does not violate the provisions of San Diego County Charter Section 1000.1. Disclosure forms are available at the Clerk of the Board's office at 1600 Pacific Highway, Room 402 and on the Clerk of the Board's website, [www.sdcountry.ca.gov/cob/ocd/propra form.doc](http://www.sdcountry.ca.gov/cob/ocd/propra%20form.doc). Original Disclosure Forms should be filed at the Clerk of the Board's office.

M. [RESERVED]

N. LIMIT OF LIABILITY

NEITHER PARTY, NOR THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, CONSULTANTS OR AGENTS SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, EXCEPT TO THE LIMITED EXTENT THAT THIS CONTRACT OR APPLICABLE PUBLIC CONTRACTING STATUTES MAY SPECIFY THEIR RECOVERY.

O. SEVERABILITY

Any provisions or portions thereof of this Contract that are unlawful, prohibited by, or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof in this Contract. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Contract may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portions thereof of this Contract are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of the provisions and this Contract shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law. All provisions of

Public Contract Code section 22300, *et seq.*, are deemed incorporated into this Contract.

P. AGREEMENT AND EXERCISE OF CONTRACT RESPONSIBILITIES

1. The Contract shall not be construed to create a contractual relationship of any kind (1) between the County or its representatives and a Subcontractor of any tier (including, but not limited to, designers, architects and engineers) or (2) between any persons or entities other than the County and Contractor. Contractor is fully responsible for all acts, omissions or negligence of its Subcontractors of any tier, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts, omissions or negligence.
2. The County and its agents do not, in exercising their responsibilities and authorities under the Contract, assume any duties or responsibilities to any Subcontractor or supplier, nor does the County or its agents assume any duty of care to Contractor, its Subcontractors, or suppliers.

Q. TITLE TO WORK: NO LIENS

Legal title to all Work shall pass to and vest in County as Work is performed, and title to all materials and equipment shall pass to and vest in County when such materials and equipment are paid for (or as soon as title passes from the vendor or supplier thereof). Contractor shall keep the Site and all materials and equipment free and clear of all liens, stop notices and charges arising out of performance of this Contract, and shall indemnify, defend and hold harmless those identified in Section 1.13.L.3.a from the claims, suits, actions, losses and liabilities described therein, including those which are a result of any breach of this responsibility and shall defend any claim or suit brought against any party required to be indemnified hereunder based upon any such claim of title or lien. Contractor shall promptly pay each Subcontractor the amount to which such Subcontractor is entitled, and shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its sub-Subcontractors in a similar manner.

R. PROPRIETARY OR CONFIDENTIAL INFORMATION OF COUNTY

1. Contractor understands and agrees that, in the performance of the services under this Contract or in the contemplation thereof, Contractor may have access to private or confidential information, which may be owned or controlled by County, and that such information may contain proprietary or confidential details, the disclosure of which may be damaging to County or to public safety. Contractor agrees that all information disclosed

by County to Contractor shall be held in confidence and used only in performance of the Contract. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent consultant would exercise to protect its own proprietary or confidential data.

S. [RESERVED]

T. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and further agrees that any violation of this prohibition on the part of Contractor, its Subcontractors, designers, employees, representatives, agents or assigns shall constitute a material breach of this Contract.

U. DISPUTES

Contractor shall continue its Work throughout the course of any and all disputes. Nothing in this Section shall allow Contractor to discontinue the Work during the course of any dispute and Contractor's failure to continue the Work during any and all disputes shall be considered a material breach of this Contract. Contractor agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Contract, including but not limited to, the time to complete the Work. Contractor also agrees that should Contractor discontinue the Work due to a dispute or disputes, the County may terminate this Contract for cause. Contractor further agrees that should Contractor not properly perform the Work due to a dispute or disputes, any and all claims, whether in law or in equity, Contractor may have against the County and its officers, directors, agents, representatives, consultants and employees, whether such claims are pending, anticipated or otherwise, shall be deemed to have been waived and forever foreclosed.

V. STATUTE OF LIMITATIONS

As to all acts or failures to act by either party to this Contract, any applicable statute of limitations shall commence on the date of issuance by County of the Proposed Final Pay Estimate, or the effective date of a termination of all of this Contract, whichever is earlier, except for latent defects, in which case the provisions of Code of Civil Procedure section 337.15 shall apply. Nothing herein shall modify any right or obligation under Code of Civil Procedure sections 337.1 and 337.15.

W. [RESERVED]

X. WAIVERS

Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Contract, including the timing of any such performance, shall not be a waiver of any right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

SECTION 1.14 MODIFICATIONS OF THE AGREEMENT

A. ALTERATIONS, MODIFICATIONS AND FORCE ACCOUNT WORK

1. No modification or deviation from the Contract, including but not limited to Exhibit B-1 Statement of Work, will be permitted except by written Contract Modification.
2. The County may, without notice to the sureties, make alterations, deviations, additions to, or deletions from the Contract; increase or decrease the quantity of any item or portion of the work; expand, contract or otherwise change the Contract Time; delete any item or portion of the work; and require extra work. The Contractor shall perform such work under applicable provisions of the Contract, unless specifically provided otherwise at the time the change is ordered. In the case of any ordered extra work, the County reserves the right to furnish all or portions of associated labor, material, and equipment, which the Contractor shall accept and use without payment for costs, markup, profit, or otherwise for such County-furnished labor, materials, and equipment.
3. Changes affecting the Contract Time or Contract Sum of the Work shall be set forth in a written Change Order that shall specify: (1) the work performed in connection with the change to be made; (2) the amount of the adjustment of the Contract Sum, if any, and the basis for compensation for the work ordered; and (3) the extent of the adjustment in the Contract Time, if any. A Change Order will not become effective until signed by the County (see Section 1.01.D).
4. A Change Order will become effective when signed by County. If County exercises its right to decide disputed issues pertaining to changed Work as set forth in Sections 1.12 and 1.14 of this Contract, then the resulting

Change Order shall be effective when signed by County, notwithstanding that Contractor has not signed it.

5. Changes not affecting the Contract Time or Contract Sum of the Work or the purpose or intent of the Specifications, in the County's discretion, may be set forth in a written Field Change executed by the County. Execution of a Field Change constitutes the Contractor's agreement to make the specified change without change to the Contract Sum or the Contract Times (see Section 1.01.C.4).
6. Changes or deviations from Contract affecting the Contract Time or Contract Sum of the Work shall not be made without the authority of an effective Change Order, except in cases of emergency discussed in Section 1.16.D of this Contract.
7. All Contract Modifications shall be diligently carried out by the Contractor in accordance with the Contract. If changes ordered in design, workmanship or materials are of such a nature as to increase or decrease the cost of any part of the Work, the price fixed in the Contract shall be increased or decreased by the amount that the Contractor and the County may agree upon as a reasonable and proper allowance for the cost increase or decrease. If an agreement cannot be reached, then the County shall reach a determination, which shall be final, subject to the Contractor's rights under Section 1.12 of this Contract. In all cases the Contractor shall perform the changed work as directed by the County subject to the Contractor's rights under Section 1.12 of this Contract. In cases where the County reaches such a determination, a Change Order shall be effective even if signed by the County only.
8. The Contractor shall, upon the County's request, permit inspection of the original unaltered Project proposal estimate, subcontract agreements, purchase orders relating to the change, and documents substantiating all costs associated with its cost proposal or claims arising from changes in the Work.
9. Changes in the Work made pursuant to this Section 1.14 and extensions of Contract Time necessary by reason thereof shall not in any way release the guarantees/warranties given by the Contractor pursuant to provisions of the Contract, nor shall such changes in the Work relieve or release the sureties of bonds executed pursuant to said provisions. The sureties, in executing such bonds, shall be deemed to have expressly agreed to any such change in the Work and to any extension of time made by reason thereof.
10. Regarding delay and impact costs of any nature, Contractor may not seek

delay compensation for on-Site or off-Site costs based on formulas, e.g., “Eichleay” or other formula. Rather, Contractor shall prove actual costs that were actually incurred because of County-caused delays. If Contractor requests compensation for delay to the construction, then Contractor shall prove and document actual costs in order to request, claim or prove compensation for delay.

B. MODIFICATIONS

The Contract may be amended only by an amendment and modified only by a Change Order or a Field Change issued in accord with the provisions of the Contract. The Contract may not be modified or supplemented orally or by implication. To be effective, any amendment or modification to the Contract must be in writing and must be signed by the appropriate County official and satisfy all other requirements of the Contract.

SECTION 1.15 TIME ALLOWANCES

A. TIME ALLOWANCE FOR PERFORMANCE OF CONTRACT

1. When the Contract has been signed by Contractor and the County, and funds necessary to make payments as required under Contract are available, the County will serve a Notice to Proceed (Exhibit C) upon Contractor to that effect, either by depositing notice in a post office or post office box regularly maintained by United States Postal Service in a pre-paid wrapper directed to Contractor at its legal address, or (at the County's option) by delivery by other means at the Contractor's legal address.
2. The start date for Contract Time shall be on the date indicated in the applicable Notice to Proceed (Exhibit C). If no date is indicated, then the start date for Contract Time shall be the fifth (5th) day from date that Contractor receives, by hand delivery or by facsimile transmission, County's written Notice to Proceed, unless the Notice to Proceed is served by mail only, then the start date under the Contract shall be the tenth (10th) day following the date of mailing. Total number of days for completion of Work on Contract shall be as provided in this Contract.

B. ENTITLEMENT TO CHANGE OF CONTRACT TIME

1. The Contract Time may only be changed by Change Order and all time limits stated in the Contract are of the essence of the Contract.
2. The Contract Time will be adjusted in an amount equal to the time lost on the critical path of the Project due to the following:

- a. Changes in the Work ordered by the County;
 - b. Acts or neglect by the County, or its agents, employees or consultants, acts or neglect of utility owners, acts or neglect of other Contractors performing other Work under contract with the County, provided Contractor has fully and completely performed its responsibilities under the Contract, including but not limited to, its cooperation and coordination responsibilities required by the Contract;
 - c. Fires, floods, epidemics, abnormal weather conditions, beyond the parameters otherwise set forth in this Section 1.15.B, earthquakes, civil or labor disturbances, strikes, or acts of God, provided damages resulting therefrom are not the result of Contractor's failure to properly protect the Work as required by the Contract.
3. The Contract Time shall not be extended for any cause identified in Section 1.15.B.2 above, however, unless:
- a. Contractor actually has been prevented from completing any part of the Work within the Contract Time due to delay that is beyond Contractor's control and due to reasons for which Contractor is not responsible. (In this regard, delays attributable to and within the control of a Subcontractor, or its subcontractors, or supplier shall be deemed to be delays within the control of Contractor);
 - b. A claim for delay is made as provided herein; and
 - c. Contractor submits a time impact evaluation that demonstrates actual delay to critical Work activities that actually delay the progress of the Work in the amount of time requested.

C. WEATHER DELAYS

- 1. Delays for adverse weather may be allowed only if the number of days of adverse weather exceeds seventeen (17) days per calendar year or the Contractor and COR agree that conditions preclude safe execution of the Work. Contractor shall give written notice of intent to claim an adverse weather day within one (1) day of the adverse weather day occurring.
- 2. In order to qualify as an adverse weather day, all of the following parameters must be met: precipitation must occur on a day in which Work in the project critical path was scheduled to occur as evidenced by the project schedule, precipitation must equal .10 of an inch or more on a single day (12:00 A.M. to 12:00 A.M.) as measured by the National Oceanic & Atmospheric Administration at Imperial Beach Weather Station KSEE (32°49'34"N, 116°58'20"W), no activity contributing to the progress of the Work has taken place (excluding activities related to stormwater management and emergencies as defined in Section 1.16.D),

and Contractor must prove that the rain actually caused delay in the project critical path.

3. Contractor shall include the foregoing adverse weather parameter in its project schedule as float. As Work on the critical path is affected by adverse weather, Contractor shall notify County and request that the number of adverse weather days that meet the parameters in Section 1.15.C.1 be moved from float to the duration of the affected activities in the critical path.
4. Adverse weather delay shall be recognized for the actual period of time Contractor proves it was delayed by conditions meeting the specified parameters. For example, and not by way of limitation, if adverse weather does not in fact delay Contractor's progress on the critical path, then no time extension shall be recognized; and conversely, if Contractor proves that adverse weather meeting the specified parameters causes delay to the critical path for a period longer than the number of adverse weather days allowable, then Contractor shall be entitled to a time extension equal to the additional days to reflect the actual period of such delay.
5. Contractor shall take all reasonable steps to mitigate potential weather delays, such as de-watering the Site and covering Work and material that could be affected adversely by weather. Failure to do so shall be cause for County to deny a time extension due to adverse weather, where Contractor could have avoided or mitigated the potential delay by exercising reasonable care.

D. NOTICE OF DELAY

1. Within seven (7) days of the beginning of any delay Contractor shall notify the County, in writing by submitting a notice of delay that shall include a full statement of all anticipated delays resulting from the delay event in question.
2. The notice shall constitute application for an extension of time only if the notice requests an extension and sets forth the impact of the delay on the critical path and Contractor's estimate of additional time required together with a full recital of causes of unavoidable delays relied upon.
3. After receipt of a request for a time extension, with verifiable documents and justifications included, the County will make a decision thereon, and will advise Contractor in writing.
4. No time extensions shall be considered without related documents and justifications necessary for the County to make a determination.

5. No time extensions shall be granted for delays for which Contractor fails to give timely and proper notice and Contractor hereby waives any and all damages or other remedies for delay for which timely and proper notice is not given.
6. Any request for extension of time shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the claimant is entitled as a result of the occurrence of said event, and shall include a written schedule document that demonstrates delay to the critical path using a time impact evaluation. County will determine all claims and adjustments in the Contract Time. No claim for an adjustment in the Contract Time will be valid and such claim will be waived if not submitted in accordance with the requirements of this Section 1.15.D.

E. NO DAMAGE FOR CONTRACTOR CAUSED DELAY

Notwithstanding anything to the contrary contained herein, Contractor shall not be entitled to any time extension or compensation, including, without limitation, extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays caused in whole or in part by Contractor's failure to perform its obligations under the Contract.

F. TIME EXTENSION WITHOUT COMPENSATION

Contractor may receive a time extension without compensation for delays resulting in whole or in part from causes beyond the reasonable control of Contractor and County, for example, adverse weather conditions exceeding Contract parameters, earthquakes, Acts of God and epidemics, or periods of delay caused jointly by County and Contractor. In such cases, a time extension and reasonable compensation for Direct Costs related to the delay, to be agreed upon by the parties, shall constitute Contractor's sole and exclusive remedy for such delays.

G. COMPENSABLE DELAY

Contractor may receive time extension and be compensated for delays caused directly and solely by the County except that Contractor shall not be entitled to damages for delay to the Work caused by the following reasons:

1. The County's right to sequence the Work in a manner which would avoid disruption to the County's tenants and their contractors or other prime contractors and their respective subcontractors, exercised as a result of Contractor's failure to perform its cooperation and coordination

responsibilities required by the Contract, the County's enforcement of any government act or regulation, or the provisions of the Contract.

2. Extensive requests for clarifications to the Contract or modifications thereto, provided such clarifications or modifications are processed by the County or its consultants in a reasonable time commensurate with the Contract requirements.
3. Granting of extension of Contract Time for any reason shall in no way operate as a waiver on the part of the County, of its right to collect liquidated damages for other delays or of its right to collect other damages or other rights to which the County is entitled.

H. LIQUIDATED DAMAGES

1. Execution of the Contract by Contractor shall constitute acknowledgement by Contractor that Contractor understands, has ascertained and agrees that the County will actually sustain damages in the amount of \$XXXX for each and every day during which completion of the Work is delayed beyond the expiration of the time fixed for completion or extensions of time allowed pursuant to provisions hereof. Contractor and the County agree that such specified measures of liquidated damages shall be presumed to be the damages actually sustained by the County as defined below, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.
2. There shall be deducted from any money due or to become due to Contractor all sums representing liquidated damages.
3. Liquidated damages shall be considered not as a penalty but as agreed monetary damage sustained by the County for loss of revenue and increased Project administration expenses, including extra inspection, construction management and architectural and engineering expenses, related to this Contract because Contractor failed to perform and complete Work within the time fixed for completion or extensions of time allowed pursuant to provisions hereof.
4. Contractor shall be responsible for completion of any Punch List items within the agreed time; otherwise Contractor agrees to pay County liquidated damages in the amount set forth in Section 1.15.H.1., commencing on the first day following the expiration of the agreed time for completion.
5. County may deduct from any money due or to become due to Contractor subsequent to time for completion of entire Work and extensions of time

allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages. Should Contractor fall behind the approved Progress Schedule, County may deduct liquidated damages based on its estimated period of late completion. County need not wait until final completion to withhold liquidated damages from Contractor's progress payments. The County at its discretion may impose liquidated damages if the approved Contractor's construction schedule shows signs of irrecoverable delays throughout construction.

6. Should money due or to become due to Contractor be insufficient to cover aggregate liquidated damages due, then Contractor forthwith shall pay the remainder of the assessed liquidated damages to County.
7. Time is of the essence.

SECTION 1.16 WORKING CONDITIONS AND PREVAILING WAGES

A. USE OF SITE/SANITARY RULES

1. All portions of Work shall be maintained at all times in neat, clean and sanitary condition.
2. Toilets shall be furnished by Contractor where needed, for use of Contractor's and Subcontractors' employees on Site, and their use shall be strictly enforced. All toilets shall be properly secluded from public observation, and shall be located, constructed, and maintained subject to approval of County.
3. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other land or areas identified in and permitted by the Contract and other land or areas permitted by applicable laws and regulations, rights of way, permits and easements, or as designated by the County, and shall not unreasonably encumber any of the foregoing premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or any improvement located thereon, or to the owner or occupant thereof or of any adjacent areas, resulting from the performance of the Work.
4. During the progress of the Work, Contractor shall keep the Site and foregoing areas free from accumulations of waste materials, rubbish, and other debris resulting from the Work. At the completion of the Work, Contractor shall remove from and about the Site and other areas all waste materials, rubbish and debris, as well as all tools, appliances, construction equipment and machinery and surplus materials. Contractor shall leave the

Site clean and ready for occupancy by the County at Substantial Completion of Work. The Contractor shall restore to original and clean condition all structures or property not designated for alteration by Contract.

5. Contractor shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Contractor subject any part of the Work structures or adjacent property to stresses or pressures that will endanger it. Contractor shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform Work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment or structures to accommodate performing the Work.

B. PROTECTION OF WORK, PERSONS AND PROPERTY

1. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with Work. Contractor shall comply with all safety requirements specified in any safety program established by County, or required by State, federal or local laws and ordinances. Contractor shall be responsible for all damage to Work, property or structures, all injuries to persons, and all damage and interruptions to County's operations, arising from the performance of Work of the Contract. Except as otherwise expressly approved by County in writing, Contractor shall at all times perform all Work in a manner which does not interrupt, damage or otherwise adversely impact any existing County facilities or operations.
2. Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.
3. Contractor shall remedy all damage, injury or loss or interruption to any property or operations referred to in Section 1.16.B of this Contract, caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Contractor's duties and

responsibility for safety and for protection of Work shall continue until such time as all the Work is completed and final acceptance of the Work. The County and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Contractor's work.

4. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
5. The County may, at its option, retain such monies due under the Contract as the County deems necessary until any and all suits or claims against Contractor for injury to persons or property or operations shall be settled and the County receives satisfactory evidence to that effect.

C. RESPONSIBILITY FOR SAFETY AND HEALTH

1. Contractor shall insure that Contractor's, and each tier of Subcontractors' employees, agents, invitees, subcontractors, designers and their employees, agents and invitees while at the Site comply with applicable health and safety laws including without limitation, Occupational Safety and Health Act of 1970 (OSHA) and rules and regulations issued pursuant thereto, and any of the County's safety regulations, as amended from time to time. Contractor shall further comply with any directions of the County regarding protective clothing, head covering, eye protection, or other applicable safety gear. The County shall have no duty to issue such directions.
2. Safety of all persons employed by Contractor or Subcontractors or designers and their respective agents and invitees on the Site shall be the full responsibility of Contractor. Contractor shall notify the County, in writing, of the existence of hazardous conditions, property or equipment at the Site, which are not under Contractor's control. However, it shall be Contractor's responsibility to take necessary precautions against injury to persons or damage to property from recognized hazards until corrected by the responsible party.
3. Contractor shall confine all persons under Contractor's employ or employ of its Subcontractors, designers or any other person acting on behalf of Contractor or Subcontractors or designers to that portion of the Site where Work under the Contract is to be performed, to routes to be designated by the County for ingress and egress thereto and to any other areas the County may expressly permit Contractor to use. Within such areas, except those routes for ingress and egress over which Contractor has no right of

control, Contractor shall provide safe means of access to all places at which persons may at any time have occasion to be present.

D. EMERGENCIES

In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from the County, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by the County. Contractor shall give the County prompt written notice if Contractor believes that any significant changes in the Work or variations from Contract have been caused thereby. If the County determines that a change in the Contract is required because of the action taken by Contractor in response to such an emergency, a Contract Modification will be issued to document the consequences of such action.

E. USE OF ROADWAYS AND WALKWAYS

Contractor shall not unnecessarily interfere with use of any roadway, walkway or other facility for vehicular or pedestrian traffic, by any party entitled to use it. Wherever interference becomes necessary for proper and convenient performance of Work, and no satisfactory detour route exists, Contractor shall, before beginning interference, and with County's prior concurrence, provide a satisfactory detour, temporary bridge, or other proper facility for traffic to pass around or over the interference and shall maintain it in satisfactory condition as long as the interference continues, all without additional compensation unless otherwise provided in this Contract.

F. NONDISCRIMINATION

No discrimination shall be made in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sexual preference, or gender of such persons, except as provided in section 12940 of the Government Code, and every contractor for public works violating the provisions of Section 1735 of the Labor Code is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the Labor Code.

G. PREVAILING WAGES

Work to be performed by Contractor in accordance with this Contract is a "public work" under Labor Code § 1720, et seq. and is subject to compliance monitoring and enforcement by the California Department of Industrial Relations. If Contractor will receive federal funds, this Contract may also be subject to the payment of prevailing wages pursuant to the Davis-Bacon Act, 40 USC § 3141 et seq., and other federal laws. It is the sole responsibility of Contractor to ensure

that all workers who perform work pursuant to this Contract are paid the correct rate of prevailing wages. Contractor waives and releases any rights it may have under Labor Code section 1726 and 1781 to seek recovery of costs from the County. When working on a federally funded project, Contractor shall ensure that all workers entitled to the payment of prevailing wages receive the higher of the applicable State or federal prevailing wage.

County has obtained from the Director of the California Department of Industrial Relations general prevailing wage determinations for the locality in which work is being performed. These determinations are on file and available in the Department of Purchasing and Contracting, 5560 Overland Avenue, Suite 270, San Diego, CA 92123, and are available from the Department of Industrial Relations on the internet at www.dir.ca.gov. Federal prevailing wage rates are available from the U.S. Department of Labor on the internet at www.access.gpo.gov.

Contractor acknowledges that because portions of the work to be performed by Contractor are subject to the payment of State and federal prevailing wages, certain requirements must be included in this Contract. Contractor certifies that it is generally aware of State and federal prevailing wage requirements and shall be bound by these requirements to the extent applicable to the work performed, including, but not limited to, the following:

1. If a worker is paid less than the prevailing wage rate owed for a day or portion of a day, Contractor shall pay the worker the difference between the prevailing wage rate and the amount actually paid as specified in Labor Code section 1775;
2. Contractor shall maintain and make available payroll and worker records in accordance with Labor Code §§ 1771.4(a)(3), 1776 and 1812;
3. If apprentices are employed on the project, Contractor shall ensure compliance with Labor Code § 1777.5;
4. Contractor is aware of the limitations imposed on overtime work by Labor Code § 1810, et seq. and shall be responsible for any penalties levied in accordance with Labor Code § 1813 for failing to pay required overtime wages;
5. Contractor shall be bound by each of the stipulations set forth at 40 USC § 3142(c), including the obligations to i) pay all laborers or mechanics employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at the time of payment, computed at the required

wage rate; ii) post the applicable prevailing wage scale in a prominent and accessible place at the work site; and iii) agree that there may be withheld from accrued payments funds necessary to ensure workers are paid the required wage rate; and

6. In accordance with 40 USC § 3143, all or part of this Contract may be terminated for failure to pay the required prevailing rate of wages.
7. In accordance with 8 Cal. Code Reg. section 16451(d), the applicable prevailing wage determinations shall be posted at each job site and Contractor will be responsible for posting the notice required by 8 Cal. Code Reg. section 16451(d) at each job site. [Posters](#) are available on the CMU website, at the [Division of Labor Standards Enforcement District Offices](#) or by emailing a request to CMU@dir.ca.gov.
8. Contractor and all subcontractors must comply with the requirements of Labor Code section 1771.1 pertaining to the registration of contractors pursuant to Labor Code section 1725.5. Registration and all related requirements of those section must be maintained throughout the term of the Contract.

H. ENVIRONMENTAL CONTROLS

Contractor shall comply with all rules, regulations, ordinances and statutes that apply to any work performed under the Contract including, without limitation, the storm water general permit, any toxic, water and soil pollution controls and air pollution controls specified in Government Code Section 11017. Contractor shall be responsible for insuring that Contractor's employees, subcontractors and the public are protected from exposure to airborne hazards or contaminated water, soil or other toxic materials used during or generated by activities on the Site or associated with the Project. Contractor shall cooperate fully with County efforts to meet all requirements in the Final Environmental Impact Report thereto for the **XXXX** project, dated **XXXX**.

I. SHORING SAFETY PLAN

1. At least five (5) days in advance of excavating any trench five feet or more in depth, Contractor shall submit to the County a detailed plan showing the shoring, bracing and sloping design and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by Labor Code section 6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.

2. During the course of the Work, Contractor shall be responsible for determining where sloping, shoring and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing for all excavation, including any excavation less than five (5) feet in depth. Contractor will be solely responsible for any damage or injuries that may result from excavating or trenching. The County's acceptance of any drawings showing the shoring or bracing design or work schedule shall not relieve Contractor of its responsibilities under this Section 1.16.I.

SECTION 1.17 GENERAL PROVISIONS

A. ASSIGNMENT

Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the County, which consent shall not be unreasonably withheld.

B. CONTINGENCY

This Contract shall bind County only when approved by the Board of Supervisors or when signed by the Director of Purchasing and Contracting.

C. EXHIBITS

All exhibits referred to herein are attached hereto and incorporated by reference.

D. FURTHER ASSURANCES

The parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required to carry out the provisions of this Contract and the intentions of the parties.

E. GOVERNING LAW

This Contract shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California and any action brought relating to this Contract shall be brought in the applicable court of competent jurisdiction located in the State of California, County of San Diego.

F. HEADINGS

The Article captions and Section headings used in this Contract are inserted for convenience only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.

G. MODIFICATION AND WAIVER.

Except as otherwise provided in this Contract, no modification, waiver, amendment or discharge of this Contract shall be valid unless the same is in writing and signed by both parties.

H. NEITHER PARTY CONSIDERED DRAFTER

Despite the possibility that one party may have prepared the initial draft of this Contract or played the greater role in preparing subsequent drafts, neither party shall be deemed to be the drafter of this Contract. In construing this Contract, no provision shall be construed in favor of one party on the ground that the provision was drafted by the other party.

I. NO OTHER INDUCEMENT

The making, execution and delivery of this Contract by the parties hereto has not been induced by any representations, statements, warranties or agreements other than those expressed herein.

J. NOTICES

Notices required or allowed to be given under this Contract shall be in writing and either personally delivered or sent by certified mail, postage prepaid, return receipt requested, addressed to the party to be notified at the address specified herein. Any such notice shall be deemed received on the date of personal delivery to the party (or such party's authorized representative) or three business days after deposit in the U.S. Mail. All notices to County shall be sent to the COR at the address specified in Section 1.01.C.3. All notices to Contractor shall be sent to Contractor's Representative at the address specified in Section 1.01.C.2. Either party may change the name and address of the person to receive notices for that party by providing written notice of the change to the other party.

K. SUCCESSORS

Subject to the limitations on assignment set forth in Section 1.17.A above, all terms of this Contract shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.

L. TIME

Time is of the essence of each provision of this Contract.

M. TIME PERIOD COMPUTATION

All periods of time referred to in this Contract shall include all Saturdays, Sundays and State or national holidays, unless the period of time specifies business days. If the date or last date to perform any act or give any notice or approval falls on a Saturday, Sunday or State or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or State or national holiday.

N. NO DEEMED APPROVAL

Failure of the County to respond to Contractor within any time limits contained in this Contract shall not constitute deemed approval.

O. CORPORATION IN GOOD STANDING

If Contractor is a California corporation, Contractor warrants that it is a corporation in good standing and is currently authorized to do business in California.

P. NO THIRD PARTY BENEFICIARY

This Contract is for the benefit of County and Contractor and their respective successors and assigns. Except as may be expressly provided in this Contract, nothing in this Contract shall be construed as granting, vesting, creating, or conferring any right of action or any other right or benefit upon any third party.

SIGNATURE PAGE

IN WITNESS WHEREOF, County and Contractor have executed this Contract effective as of the date first set forth above

COUNTY OF SAN DIEGO

(Insert Name of Contractor)

By:

By:

JOHN M. PELLEGRINO, Director
Department of Purchasing and
Contracting

Print Name

Print Title

Date:_____

**APPROVED AS TO FORM AND
LEGALITY
COUNTY COUNSEL**

By:_____ Senior Deputy

By:

Print Name

Print Title

Date:_____

[Note: if Contractor is a Calif. corp., need proof (resolution from corp.'s board, etc.) that person who signs contract is authorized to sign, or need one signature from each of the following two groups:

- 1. Executive Group: President, Vice-president or Chairman of Board; and
- 2. Management Group: Secretary, Assistant Secretary, Assistant Treasurer or Chief Financial Officer. (Corp. Code § 313.)]