

Issue Date: December 18, 2024

FROM: County of Alameda - GSA/TSD
1401 Lakeside Drive, Suite 800
Oakland, California 94612
Liam Brown, Senior Project Manager Email:
Liam.Brown@acgov.org

TO DESIGN BUILD ENTITIES: Request for Prequalification of Design Build Entities for Alameda County Facilities Needs Priority 1 Program

CLARIFICATION NOTICE #1

THIS CLARIFICATION is hereby made a part of the Request for Prequalification of Design Build Entities dated December 6, 2024, as though originally included therein. The following amendments, additions and/or corrections shall govern this prequalification.

- CN1-1 Solicitations for products will be kept on file in the event information on such products is requested by the DBE.
- CN1-2 The Facilities Needs Priority 1 Program Design Build Package #3 Pre-Qualification Conference presentation can be found on the County of Alameda Contracting Opportunities Page. [Current Bid | General Services Agency - Alameda County](#)
- CN1-3 Recommended Non-mandatory Site Visits
Both site visits, on December 17th, 2024 and January 7th, 2025 will include the same tour (all of the Design-Build Package #3 projects on the Fairmont campus). A map and parking passes are included in the sharefile listed in the attached Non-mandatory Pre-qualification Conference slides.
- CN1-4 Sub-consultant Mechanical/Plumbing, Electrical, and Fire/Life Safety Engineers Mechanical, Electrical, and Fire/Life Safety Engineers can be the same company or combination of companies:
- If the same firm is proposed for more than one of the 4 listed disciplines (for example one firm for both Electrical Engineering and Fire/Life Safety Engineering), submit that firm separately for both the Electrical Engineer and Fire/Life Safety Engineer. That firm will be scored individually for each discipline.
 - If more than one firm will perform Mechanical/Plumbing engineering (for example HVAC and Plumbing), submit one completed "Part III C" form for each firm. Both forms together will be scored as one firm.
 - Design-Build subcontractors can be submitted as engineering Sub-consultants, as long as they hold the required licensure. Project Experience for these firms must be submitted for their engineering work, not sub-contracting work.

CN1-4 Letter of Transmittal

Include a Letter of Transmittal with your submittal, no more than one page in length. In this letter, identify the Core Organizations you are proposing to comply with the County's Small Local Emerging Business (SLEB) Program. As requested on page 12 of the RFQ, include in the Letter of Transmittal a description of the outreach efforts that your firm made to include Small Local Emerging Business (SLEB) sub-consultant(s).

CN1-5 Addenda

No addenda will be issued for this RFQ. Instead, as noted on page 10 of the RFQ:

- Should there be a need to issue clarifications to this RFQ, the County will issue a Clarification Notice.
- Any Clarification Notices will be posted on the website below no later than three business days prior to the RFQ submission date. It is the responsibility of each firm to make itself aware of any Clarification Notices with or without further notification from the County.

CN1-6 All buildings are fully occupied except for Willow Rock Buildings A1 and A2.

CN1-7 There will be construction in progress throughout the Fairmont campus during construction of Design-Build Package #3, however most of it will be limited to similar interior repair and renovation work in other buildings. There will also be site work throughout the campus (hardscape replacement, electrical upgrades, utility investigation, etc.) on less than 10% of the campus.

CN1-8 Work for ADA compliance will include exterior path of travel from accessible parking spaces to the building entry, which will be included in the fixed price. Work will also include ADA path of travel upgrades inside the buildings; an allowance will be included in the contract for this work.

CN1-9 RFQ Key Personnel

Under 'Part V: Key Personnel' for all required roles, every project for those key individuals asks for "type of facilities". Where this section includes "Type of Facility (with or without a check box) simply write in a few words describing the type of facility.

CN1-10 Agreement and General Conditions have been attached for reference.

Questions:

CN1-11 Question: Is the project PLA?

Answer: The project is PSCBA

CN1-12 Question: Is this a Healthcare/HCAI project?

Answer: No, these facilities belong to the AC Behavioral Health Department.

CN1-13 Question: Is there a list of vendors and GCs?

Answer: Please refer to the attached lists of attendees to the non-mandatory pre-qualification Conference for RFQ#3 and List of attendees for Non-mandatory Pre-qualification Conference for RFQ#1

ATTACHMENTS

CN1.3 Slides from Non-mandatory Pre-qualification Conference held on December 12, 2024

CN1.3 List of attendees to the Non-mandatory Pre-qualification Conference for RFQ#3 and List of attendees for Non-mandatory Pre-qualification Conference for RFQ#1.

CN1.10 General Conditions

END OF CLARIFICATION NO. 1

ATTACHMENTS

CN1.3
SLIDES FROM NON-MANDATORY PREQUALIFICATIONS CONFERENCE
AND LIST OF ATTENDEES

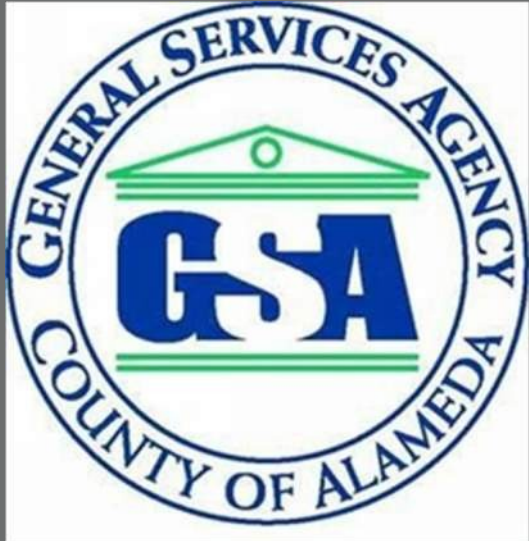
SWINERTON



December 12, 2024

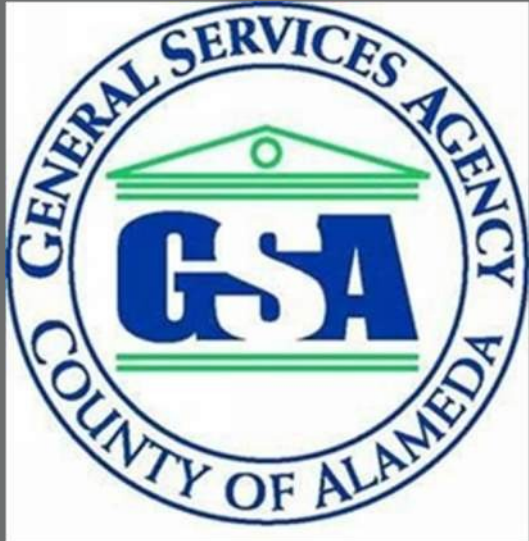


**Facilities Needs Priority 1 Program
Design-Build Package #3 Pre-qualification Conference**



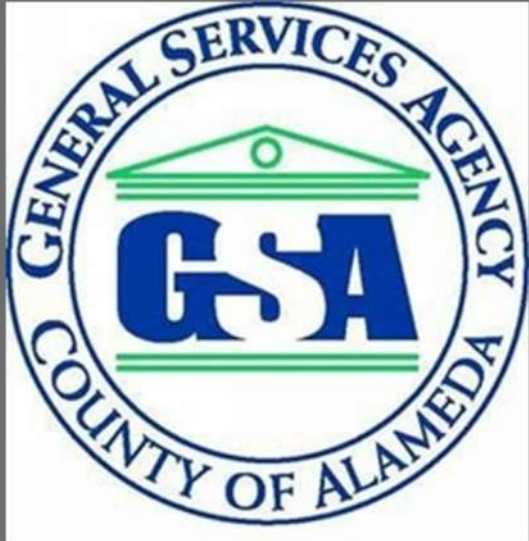
Introductions

- Project Team
 - **Alameda County General Services Agency**
 - Alan Baxter, Chief Deputy of Operations
 - Keith Rowan, Deputy Director, Capital Programs
 - Liam Brown, Senior Project Manager
 - **Swinerton Management & Consulting**
 - John Baker, Project Executive
 - Julie Pebley, Senior Project Manager
 - Albert Wege, Senior Project Manager
 - Alely Ramos, Assistant Project Manager
 - **Shah Kawasaki Architects**
 - Youngchae Lee, Principal
- Attendee Register
 - Please Provide Attendee Contact Information in Chat



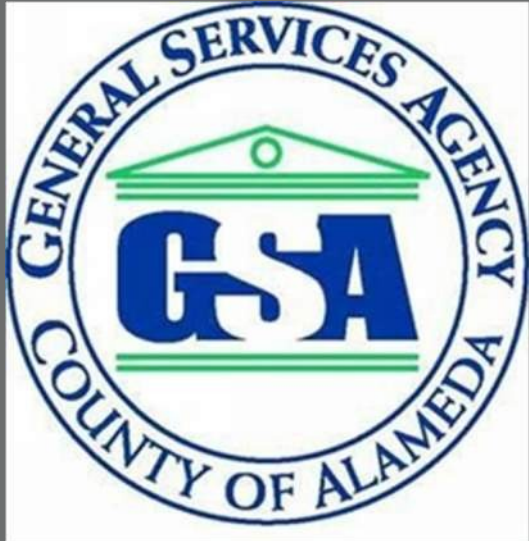
Agenda

- **Project Overview**
- **Facilities and Scope of Work**
- **Project Schedule**
- **Pre-qualification Questionnaire**
- **Request for Proposals**
- **Non-Mandatory Site Visits**
- **Questions and Answers**



Project Overview

- **Scope of work**
 - Remediation of deficiencies within existing facilities
 - Items identified in 2018/2019 Facility Conditions Assessment (FCA) performed by Cannon Design
 - Design, Construction Documents, Permitting, and Phased Construction
- **Permitting Agencies:**
 - Alameda County Public Works Agency (PWA)
- **Design-Build Contract Value:**
 - Approximately \$15 M Fixed Fee, established by GSA, Swinerton, and Leland Saylor Associates
 - Includes all A/E fees, Permits, and Construction
 - Allowances (ADA compliance, code upgrades, unforeseen conditions)
- **Facilities Condition Assessment (FCA):**
 - Link to the FCA describing the scope of work (page 3 of RFQ)
 - Final scope of work included in RFP will include approximately 85% of FCA items



Project Overview

- Alameda County Health (ACH) Facilities, Behavioral Health Department Facilities (ACH-BHD) / Telecare
 - Villa Fairmont
 - Address: 15200 Foothill Blvd, San Leandro
 - Willow Rock:
 - Building A (A1, A2, A3, and A4), B, C, and D
 - Address: 2050 Fairmont Dr, San Leandro



Villa Fairmont

- Year Constructed: 1980
- Gross SF: 35,754
- Floors: 1

- Scope: Electrical, exterior finishes, interior finishes, roofing, flooring, interior plumbing, data/low voltage, fire alarm, HVAC, fire alarm

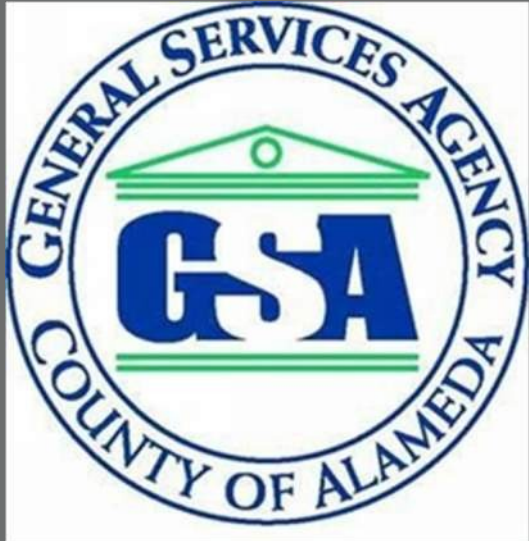


Willow Rock Center

- Gross SF: 26,900
- Floors: 1
- Buildings: 4 (Buildings A1-4, B, C, D)

- Scope: Electrical, interior finishes, fire alarm, flooring, interior plumbing, data/low voltage/BMS, HVAC, flooring

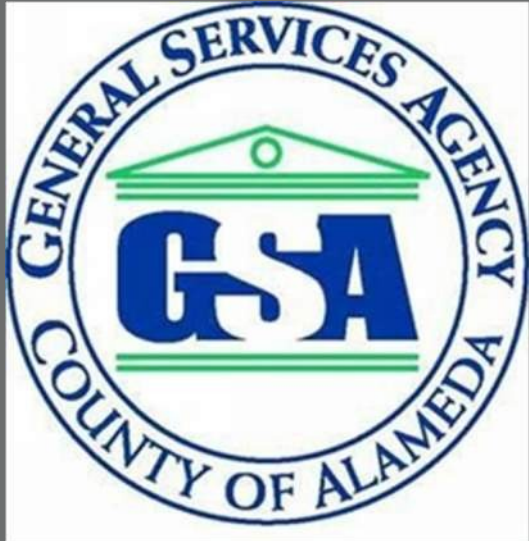
- Separate exterior envelope replacement project



Schedule

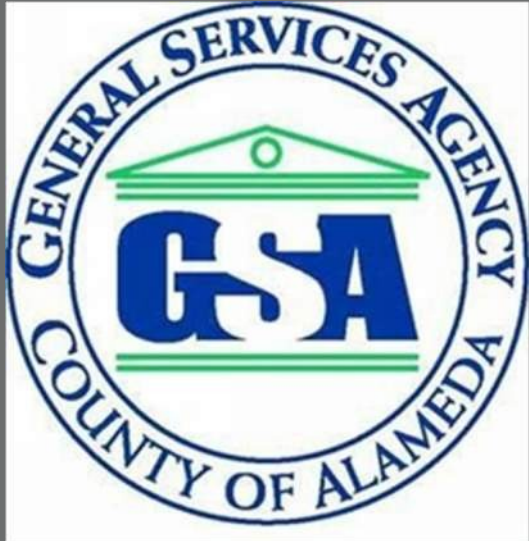
- Anticipated Project Schedule (all dates subject to change)

Milestone	Date
Issue RFQ	December 6, 2024
Non-Mandatory RFQ Conference (virtual)	December 12, 2024. 11am – 12pm
Recommended Non-Mandatory Site Visits	December 17, 2024. 10-11am January 7, 2025. 10-11am
Final requests for clarifications	January 8, 2025. 5:00 pm
Submit Prequalification Questionnaire	January 17th, 2025, 3:00 pm
County Evaluation of Prequalification Questionnaire	January 2025
Notice to Shortlist	January 2025
Issue RFP to DBEs	February 2025
Confidential Meetings	March 2025
DBEs Submit Proposals	April 2025
County Reviews DBE Submittals	April 2025
Formal Interviews	April 2025
Notice to Award	May 2025
BOS Award	May 2025
Issue NTP	June 2025
Design	June 2025 - December 2025
Construction	December 2025 - May 2027



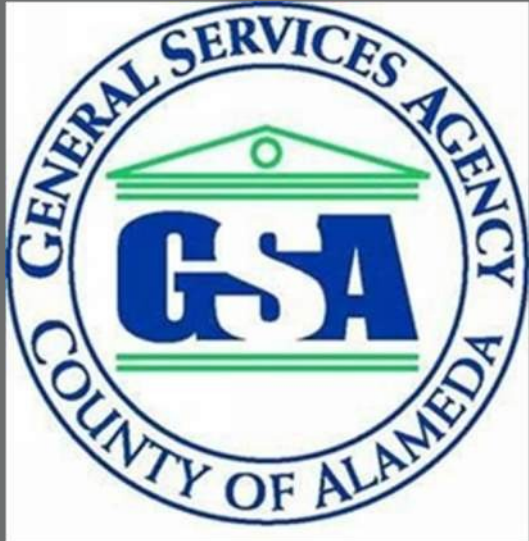
Pre-qualification Questionnaire

- Must use the Questionnaire provided in the RFQ
- Questions and Answers must be submitted in writing to Liam Brown of GSA via e-mail: Liam.Brown@acgov.org
- Today's questions must be followed up in writing to be officially answered
- Clarification Notices and Distribution List posted to GSA website (link on page 10 of RFQ):
<https://gsa.acgov.org/do-business-with-us/contracting-opportunities/>



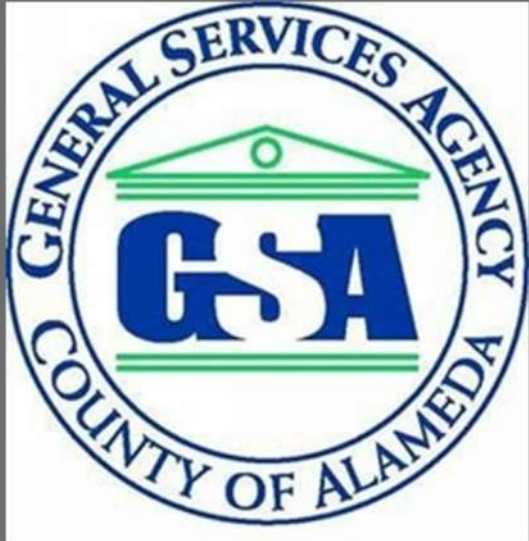
Pre-qualification Questionnaire

- Small Local And Emerging Business (SLEB) Program
 - 20% of Design Consultant fees must be for SLEB firms
 - Link to SLEB program (page 12 of RFQ)
 - RFQ letter of Transmittal:
 - Identify proposed SLEB firms
 - Description of outreach efforts made to include SLEB firms
 - Project is subject to the PSCBA adopted by County of Alameda Board of Supervisors (applies to all construction projects of \$1 M or more)
 - Successful DBE and its partners providing work in covered trades will be signatories to PSCBA
 - Proposal Requirement (no RFQ submittal requirements)
 - Link to PSCBA (page 12 of RFQ):
<https://acgovt-my.sharepoint.com/my?id=%2Fpersonal%2Fliam%5Fbrown%5Facgov%5Forg%2FDocuments%2FPSCBA&FolderCTID=0x012000AFACEC94D4AA2D4BA574CB4931FD80C0>



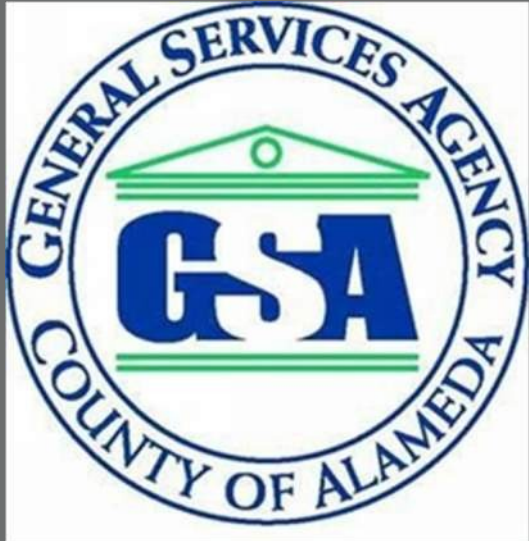
Pre-qualification Questionnaire

- Design/Build Entity (DBE): California “A” or “B” Contractor’s License
- DBE will hold the contract with County of Alameda
- County intends to Shortlist 3 DBE’s
- Stipend to those not selected
- DBE Core Organizations:
 - **General Contractor**
 - **Architect**
 - **Mechanical/Plumbing Engineer**
 - **Electrical Engineer**
 - **Civil Engineer**
 - **Fire/Life Safety Engineer**
- Mechanical, Electrical, and Fire/Life Safety Engineers can be same firms
- If more than one firm (e.g. HVAC and Plumbing), submit for each
- Design-Build subcontractors can be submitted as licensed Engineers



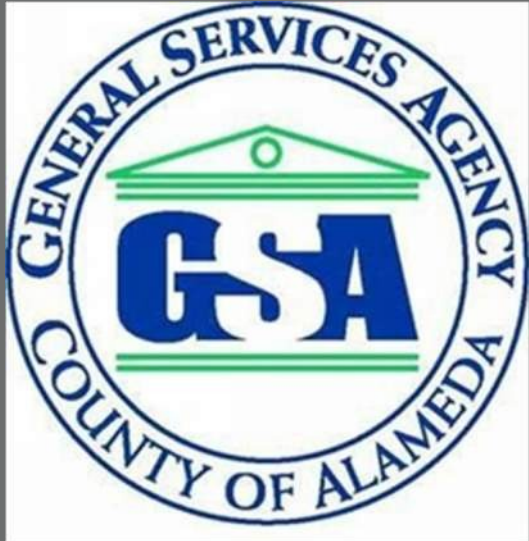
Pre-qualification Questionnaire

- Precluded Firms:
 - Swinerton
 - Shah Kawasaki Architects
 - BKF, Civil Engineer
 - Interface Engineers, Electrical Engineer
 - ECS Limited, Engineering Envelope Consulting
 - Sandis Engineers
 - Leland Saylor Associates
 - Terracon
 - Cannon Design



Pre-qualification Questionnaire

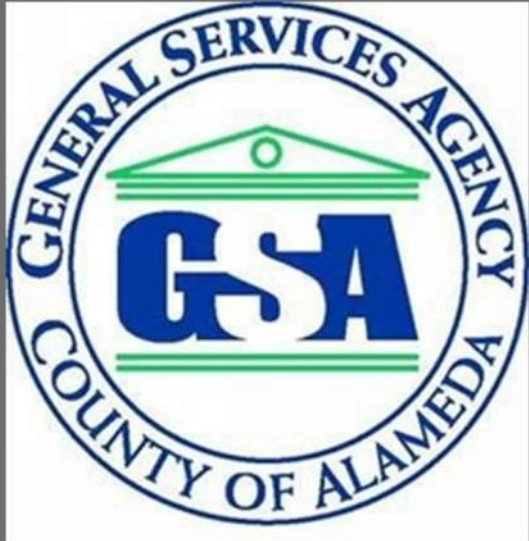
- **Part I: Information About the DBE, its Members, and Core Organizations**
- **Part II: Essential Requirements for the DBE as a Whole**
- **Part III: Scored Questions for Members of the DBE Entity and Core Organizations**
- **Part IV: Recent Construction Projects Completed**
- **Part V: Key Personnel**
- **Part VI: Certification**
- **Reference Interview Questions**
- **Scoring Worksheets**



Pre-qualification Questionnaire

Scoring Framework

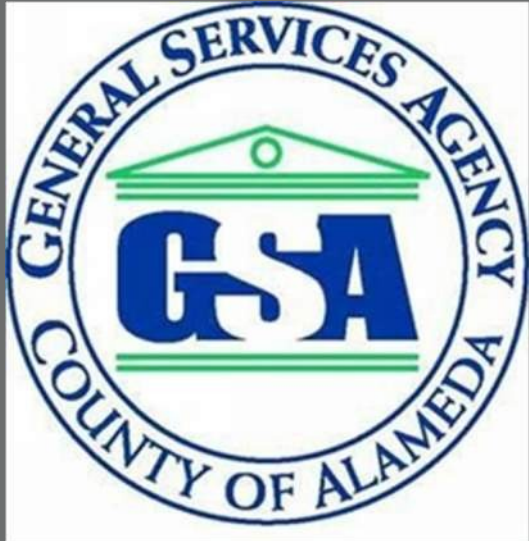
- Part I: **Info Only** Information About the DBE, its Members, and Core Organizations
 - Part II: **Pass/Fail** Essential Requirements for the DBE as a Whole
 - Part III: Scored Questions for Members of DBE Entity & Core Organizations:
 - 90 pts** General Contractor
 - 40 pts** Architect
 - 15 pts x 4** Each for 4 Sub-consultants
 - Part IV: Recent Construction Projects Completed
 - 20 pts** General Contractor
 - 20 pts** Architect
 - Part V: **30 pts** Key Personnel
 - Reference Interview Questions
 - 20 pts** General Contractor
 - 20 pts** Architect
-
- 300 Total Points**



Request for Proposals

DESIGN CRITERIA

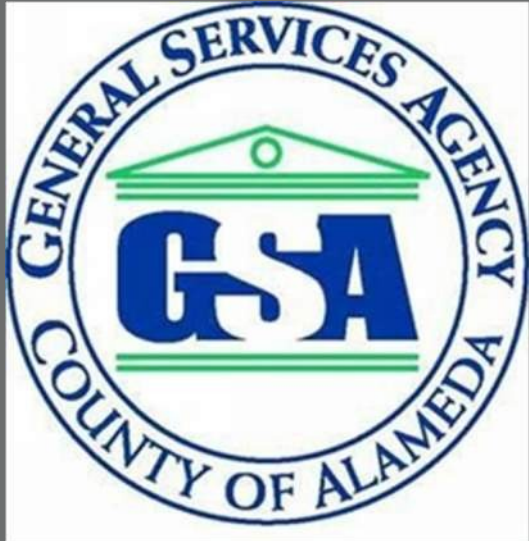
- Based on Facility Condition Assessment (FCA)
- Basis of Design
- Performance Specifications
- Sitework Diagrams (ADA path of travel)
- Operational and Construction Phasing Requirements
- Reference Documents:
 - Hazardous Materials reports
 - Existing building drawings



Request for Proposals

CONTRACT REQUIREMENTS

- **Division 0 & 1 Documents, including:**
 - Agreement and General Conditions (drafts to be issued in Clarification Notice #1)
 - General Requirements
 - Design Services and Deliverables
- **Allowances**
 - ADA Compliance
 - Code Upgrades
 - Unforeseen Conditions
- **Payment Bond and Performance Bond**
 - Surety bonds issued by a corporation licensed in the State of California
 - Sureties must be California State registered Class "A" Securities
- **Prevailing Wage Requirements (California Labor Code)**
- **PSCBA and SLEB Compliance**



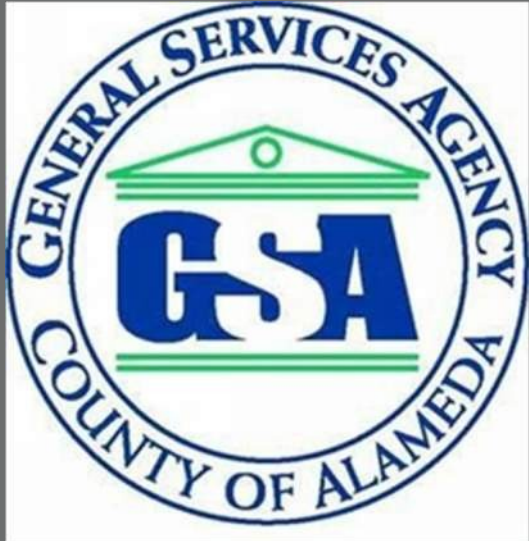
Request for Proposals

PROCESS:

- Not a Design Competition
- Confidential Meetings (including Facility Operators)
- Stipend (TBD)

SUBMITTAL REQUIREMENTS:

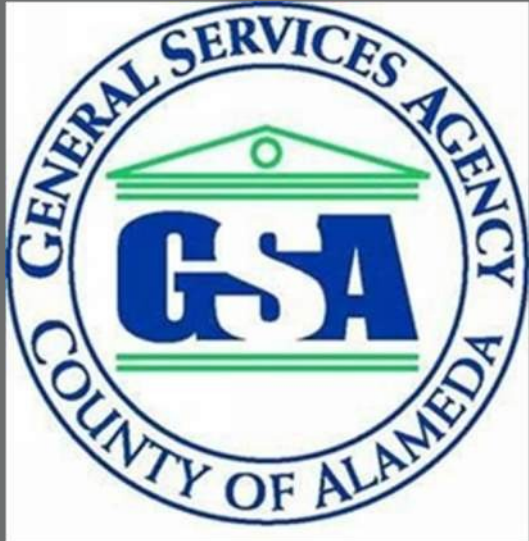
- **Designated Subcontractors**
- **County Minimum Requirements**
 - Building Systems, Sustainable Design/Life-Cycle Costing
 - Skilled Labor Availability, Safety Record
- **Design & Construction Qualifications**
 - Project, Client and AHJ Experience
 - Project Team, Schedule, Construction Phasing Plan
- **Best Value Enhancements**
- **Interview**



Request for Proposals

SELECTION PROCESS

- “Best Value” as defined in California Public Contract Code (PCC) sections 22160, 22161, 22164, and 22166
- Point Accumulation Process:
 - Designated Subcontractors
 - County Minimum Requirements
 - Design & Construction Qualifications
 - Best Value Enhancements
 - Interview



Non-Mandatory Site Visits

- Recommended Non-mandatory site visits:
 - **December 17, 2024. 10-11am**
 - **January 7, 2025. 10-11am**
- Visits will include an exterior walking tour of all the facilities at the Fairmont Campus.
- Meet at **2054 Fairmont Drive, San Leandro.** Front entrance of the BMD office.
- Parking pass will be provided, please refer to the sharefolder.



Q & A

**Facility Needs Priority 1 (FNP1) Program**

Design Build Package #3

Non Mandatory RFQ Conference

Date: December 12th, 2024

List of Attendees

Company	Name	email	Telephone
Suffolk Construction	Ellen McAmis	emcamis@suffolk.com	415 848 0500
Suffolk, General Contractor	Steve Lawler, AIA, DBIA,	Slawler@suffolk.com	415 848 0500
Suffolk Construction GC	Brad Denney	bdenney@suffolk.com	415 848 0500
W.E. Lyons Construction Co	Rebecca Boyd	estimating@welyons.com	925 658 1600
Level 10 Construction, General Contractor	Joseph Orais	joseph.orais@level10gc.com	408 747 5000
Level 10 Construction, General Contractor	Terese Salas	tsalas@level10gc.com	408 747 5000
Multistudio	Hannah McCormick	hannah.mccormick@multi.studio	415 844 2110
Alten Construction, LLC	Karin Romeo	bids@altenconstruction.com	510 234 4200
Alten Construction	Charlz Boado	cboado@altenconstruction.com	510 234 4200
Boulder Associates SF	Suj Mishra & Kim Ramos		650 922 1843
Sandis Civil Engineers	Guadalupe Bumatay	gbumatay@sandis.net	510 301 7911
ADC Construction Management, Inc (ADC-CM). General Contractor	Shelly Claman	sclaman@adcengineers.com	408 297 1881
ADC Construction Management, Inc (ADC-CM). General Contractor	Kris Gholamipour	kgholamipour@adcengineers.com	408 317 7404
Soltek Pacific	Christopher Perkins	cperkins@soltekpacific.com	559 612 1044
Group 4 Architecture	Christopher Plattsmier	cplattsmier@g4arch.com	650 871 0709
IMEG	Ryan Sprangers	ryan.p.sprangers@imegcorp.com	
NV Construction, General Contractor	Henry Vila	Henry@nvc.llc	
Rutherford + Chekene Structural Engineers	Laura Ellington	lellington@ruthchek.com	
SVA Architects	Velma Anelo	vanelo@sva-architects.com	925 374 9884
LDA Architects, Interiors	Thomas Lee	tom.lee@ldaarch.com	415 552 9940
Sr PM, GSA-Capital Programs	Liam Brown	liam.brown@acgov.org	510 208 9578
Deputy Director, GSA Capital Programs	Keith Rowan		
Project Executive, Swinerton Management and Consulting	John Baker		
Sr PM, Swinerton Management and Consulting	Albert Wege		
Assistant PM, Swinerton Management and Consulting	Alely Ramos	alely.ramos@swinerton.com	925 536 7087

CN1.3
LIST OF ATTENDEES
FOR NON-MANDATORY PRE-QUALIFICATION CONFERENCE FOR RFQ#1

List of interested professionals in the program



Project #23060- Facility Needs Priority 1 Project
VIRTUAL NON-MANDATORY PRE-BID CONFERENCE SIGN-IN SHEET
 Held on **May 30, 2024 at 3:00 PM**
 via Microsoft Teams

Blank fields below indicate no information provided

	Company Name & Address	Contact, Title	Phone	E-mail
1	AE3 Partners	Lisa Arias, Sr., Marketing Manager	P: F:	LisaA@ae3partners.com
2	AE3 Partners	Liz Andrews, Operations Manager	P: 415-233-9991 F:	liza@ae3partners.com
3	BCCI Construction	Roger Moore, Project Executive	P: 415-589-8300 F:	roger.moore@bcciconst.com
4	BKF Engineers	Devon Bacon, BD Director	P: F:	Dbacon@bkf.comm
5	Boldt	Karen Carr, Director of Business Development	P: 916-210-9957 F:	Karen.Carr@Boldt.com
6	Boulder Associates	Ian Stevens, Marketing Manager	P: F:	istevens@boulderassociates.com
7	Boulder Associates	Jenny Hastings, Director of Marketing and Business Development	P: 916-213-9725 F:	jhastings@boulderassociates.com
8	Clark Construction	Dake Vannorsdel, Sr. Project Manager	P: F:	dake.vannorsdel@clarkconstruction.com
9	Clark Construction	Thai Lam, Sr. Marketing Manager	P: F:	thai.lam@clarkconstruction.com
10	Degenkolb Engineers	David Christensen, Vice President	P: F:	

**PROJECT# 23060 FACILITY NEEDS PRIORITY 1 PROJECTS
MANDATORY PRE-SUBMITTAL NETWORKING CONFERENCE SIGN-IN SHEET
MAY 30, 2024**

	Company Name & Address	Contact, Title	Phone	E-mail
11	Degenkolb Engineers	Rebecca Weldon, Regional BD Director	P: 209-598-0695 F:	rweldon@degenkolb.com
12	Degenkolb Engineers	Robert Graff, Principal	P: 415-392-6952 F:	rgraff@degenkolb.com
13	Dreyfuss + Blackford Architects	Andrea Beard, Business Development	P: F:	abeard@db-arch.com
14	Dreyfuss + Blackford Architects	Ginger Thompson, Senior Associate	P: 916-215-9935 F:	gthompson@db-arch.com
15	DSK Architects	Ali Mojabi, Director of Operations	P: F:	ali@dskarch.com
16	DSK Architects	Terry Tran, Director	P: 415-692-6387 F:	terry@dskarch.com
17	Flint Builders	Nathan Stiles	P: F:	NStiles@flintbuilders.com
18	Flint Builders	Ryan Tognetti, Principal	P: F:	rtognetti@flintbuilders.com
19	General Services Agency - Capital Programs	Keith Rowan, Deputy Director – Capital Programs	P: 510-208-9515 F: 510-208-9711	Keith.Rowan@acgov.org
20	General Services Agency - Capital Programs	Liam Brown, Sr. Project Manager	P: 510-208-9578 F: 510-208-9711	Liam.Brown@acgov.org
21	General Services Agency - Capital Programs	Raphaelle Hallaj, Sr. Project Manager	P: 510-208-3753 F: 510-208-9711	Raphaelle.Hallaj@acgov.org
22	HED Architecture	Brett Paloutzian, Healthcare Principal	P: F:	BPaloutzian@HED.Design
23	HED Architecture	Ronda Paradis, Associate Principal	P: 857-409-0637 F:	RParadis@hed.design
24	HED Architecture	Sharon Woodworth	P: F:	SWoodworth@HED.Design
25	HED Architecture	Timothy Hurvitz, AIA, Marketing Sector Leader	P: 415-549-8807 F:	THurvitz@HED.Design

**PROJECT# 23060 FACILITY NEEDS PRIORITY 1 PROJECTS
MANDATORY PRE-SUBMITTAL NETWORKING CONFERENCE SIGN-IN SHEET
MAY 30, 2024**

	Company Name & Address	Contact, Title	Phone	E-mail
26	HED Architecture	Tony Tran	P: F:	info@quantomatik.com
27	Herrero Builders	Chip Jordan	P: 415-905-0617 F:	cjordan@herrero.com
28	HMC Architects	Dena Null, Principal- in-Charge (NorCal)	P: 503-367-4496 F:	Dena.Null@hmcarchitects.com
29	HY Architects	Carolyn Kenney	P: 510-388-7860 F:	ckenney@kenneyassociates.com
30	IMEG Engineering Corp.	Ryan P. Sprangers	P: F:	Ryan.P.Sprangers@imegcorp.com
31	IMEG Engineering Corp.	Thomas C. Richardson, Business Development, California	P: 714-697-9724 F:	Thomas.C.Richardson@imegcorp.com
32	Kitchell CEM	Katie Khanna, Project Manager	P: F:	kkhanna@kitchell.com
33	MS Commercial	Chris Trent	P: F:	ctrent@msconstruction.com
34	Multistudio	Amberley Johnson, Marketing Lead	P: F:	Amberley.Johnson@multi.studio
35	Overaa Construction	Carl Overaa, President	P: F:	carlo@overaa.com
36	Overaa Construction	Charlene Cabural, Marketing Coordinator	P: 510-234-0926 F:	charlenec@overaa.com
37	Overaa Construction	Martha Castaneda	P: F:	marthac@overaa.com
38	Overaa Construction	Scott Onick, Project Executive	P: F:	scotto@overaa.com
39	Pankow	Bret Firebaugh, VP, Business Development	P: 415-716-9224 F:	bfirebaugh@pankow.com
40	Peacock Construction	Joe Bernard	kayladehaven@sbjames.com	jbernard@peacockconstruction.com

**PROJECT# 23060 FACILITY NEEDS PRIORITY 1 PROJECTS
MANDATORY PRE-SUBMITTAL NETWORKING CONFERENCE SIGN-IN SHEET
MAY 30, 2024**

	Company Name & Address	Contact, Title	Phone	E-mail
41	Pyxis Partners	Christopher Lim, Principal	P: 650-892-7273 F:	chris@pyxis-partners.com
42	Pyxis Partners	Jesse Eisenhart	P: 415-994-4974 F:	jesse@pyxis-partners.com
43	Quiring General, LLC	Esther Cuevas, Business Development Director	P: 925-201-6347 F:	ecuevas@quiring.com
44	Rodan Builders	Karen Giammona, Marketing Director	P: 650-508-1700 F:	bids@rodanbuilders.com
45	RRM Design	Byron Wong	P: F:	BWong@rrmdesign.com
46	Rutherford + Chekene	Laura Ellington	P: F:	LEllington@ruthchek.com
47	S + B James Construction California, Inc.	Kayla DeHaven, Marketing Manager	P: 530-329-1617 F:	kayladehaven@sbjames.com
48	Shah Kawasaki Architects	Nathan Nguyen	P: F:	nnguyen@skarc.com
49	Shannon Leigh	Jen Colosi, BD Strategist	P: F:	jcolosi@shannonleigh.net
50	Swinerton	Alely Ramos	P: F:	ALELY.RAMOS@swinerton.com
51	Swinerton	Antonio Hinson, Senior Project Manager	P: 925-507-9257 F:	antonio.hinson@swinerton.com
52	Swinerton	John Baker	P: F:	jbaker@swinerton.com
53	TEF Design	Alyosha Verzhbinsky, Principal	P: F:	alyoshav@tefarch.com
54	TEF Design	Natalie States	P: F:	natalies@TEFarch.com
55	Truebeck Construction	Paul Cunningham, Project Executive	P: 650-678-6945 F:	Paul.Cunningham@truebeck.com

PROJECT# 23060 FACILITY NEEDS PRIORITY 1 PROJECTS
MANDATORY PRE-SUBMITTAL NETWORKING CONFERENCE SIGN-IN SHEET
MAY 30, 2024

	Company Name & Address	Contact, Title	Phone	E-mail
56	Verse Design	Robert Shepherd	P: 415-706-0195 F:	rshepherd@vdlc.co
57	Webcor	Sara Bowhay, Sr. Marketing Manager	P: F:	sara.bowhay@webcor.com
58	Webcor	Thomas Soohoo	P: F:	thomas@webcor.com
59	William Duff Architects	David Plotkin, Principal	P: 415-604-4250 F:	dplotkin@wdarch.com
60	William Duff Architects	Sarah Mergy, Director of Business Development & Marketing	P: F:	smergy@wdarch.com

CN1.10
GENERAL CONDITIONS

DOCUMENT 00 72 00

GENERAL CONDITIONS

1. INVESTIGATIONS AND SUBCONTRACTORS 1

 1.1 Investigation Required
 1.2 Design Builder and Subcontractors

2. SCOPE OF DESIGN BUILD RESPONSIBILITY 4

 2.1 Description of Work.....
 2.2 All-Inclusive Design Build Obligation

3. CONTRACT AWARD AND COMMENCEMENT OF THE WORK..... 8

 3.1 Commencement of Work
 3.2 Mobilization

4. BONDS AND INSURANCE 9

 4.1 Bonds
 4.2 Insurance

5. DRAWINGS AND SPECIFICATIONS..... 10

 5.1 Intent
 5.2 Drawing Details and Specification Descriptions
 5.3 Specifications and Drawings do not Control Division of Work
 5.4 Interpretation of Contract, Drawings and Specifications.....
 5.5 Checking/Updating of Drawings.....
 5.6 Necessary and Incidental Work
 5.7 Standards to Apply Where Detailed and/or Performance Specifications are not
 Furnished
 5.8 Precedence of Documents.....
 5.9 Design Deliverables, Shop Drawings and Submittals to be Furnished by Design
 Builder in Addition to Completed Design Drawings.
 5.10 Construction Documents.....

6. CONSTRUCTION BY THE COUNTY OR BY SEPARATE CONTRACTORS 17

 6.1 The County's Right to Perform Construction and to Award Separate Contracts.....
 6.2 Mutual Responsibility
 6.3 County Authority Over Coordination

7. THE COUNTY AND PAYMENT 19

 7.1 The County's Representatives.....
 7.2 Means and Methods of Design and Construction.....
 7.3 Receipt and Processing of Applications for Payment.....

8. CONTROL OF THE WORK..... 21

 8.1 Supervision of Work by Design Builder.....
 8.2 Observation of Work by County
 8.3 Access to Site
 8.4 Existing Utilities
 8.5 Underground Facilities

9.	WARRANTY AND GUARANTEE; INSPECTION AND MAINTENANCE OF WORK.....	26
9.1	Warranty and Guarantee	
9.2	Inspection of Work	
9.3	Correction of Defective Work.....	
9.4	Acceptance and Correction of Defective Work by the County.....	
9.5	Rights Upon Inspection or Correction	
9.6	Samples and Tests of Materials and Work	
9.7	Proof of Compliance with Contract Provisions.....	
9.8	Acceptance	
9.9	Maintenance of Work.....	
10.	DESIGN BUILDER’S ORGANIZATION AND EQUIPMENT	34
10.1	Design Builder’s Legal Address	
10.2	Design Builder’s Office at the Site	
10.3	Design Builder’s Superintendents or Forepersons	
10.4	Proficiency in English.....	
10.5	Design Builder’s and Subcontractors’ Employees	
10.6	Design Builder to Supply Sufficient Workers and Materials.....	
10.7	Design Builder to List Trades Working.....	
10.8	Design Builder’s Use of the Site	
11.	PROSECUTION AND PROGRESS OF THE WORK	38
11.1	Schedules and Examinations of Contract Documents.....	
11.2	Lines and Grades, Measurements.....	
11.3	Cost Data	
12.	CLAIMS BY DESIGN BUILDER.....	41
12.1	Performance During Claim Process.....	
12.2	Definition of Claim	
12.3	Claim Presentations	
12.4	Claim Resolution	
13.	LEGAL AND MISCELLANEOUS	44
13.1	Laws and Regulations.....	
13.2	Permits and Taxes	
13.3	Responsibility of Design Builder and Indemnification	
13.4	Notice of Concealed or Unknown Conditions	
13.5	Notice of Hazardous Waste or Materials Conditions	
13.6	Suspension of Work.....	
13.7	Force Majeure	
13.8	Termination of Contract for Cause.....	
13.9	Termination of Contract for Convenience	
13.10	Contingent Assignment of Subcontracts.....	
13.11	Remedies and Contract Integration	
13.12	Patents	
13.13	Substitution for Patented and Specified Articles.....	
13.14	Interest of Public Officers	
13.15	Limit of Liability.....	
13.16	Severability.....	
13.17	Contract Documents and Exercise of Contract Responsibilities	
13.18	Title to Work: No Liens.....	
13.19	Proprietary or Confidential Information of County.....	
13.20	Ownership of Results/Works for Hire.....	

13.21	Compliance with Americans with Disabilities Act.....	
13.22	Disputes	
13.23	Statute of Limitations.....	
13.24	Waivers	
13.25	Beneficial Occupancy.....	
13.26	Successors and Assigns	
13.27	Correction of Errors and Omissions.....	
13.28	Endorsements	
13.29	Use of Private Property	
14.	MODIFICATIONS OF THE CONTRACT DOCUMENTS.....	64
14.1	Alterations, Modifications and Force Account Work	
14.2	Entire Agreement	
14.3	Modifications	
15.	TIME ALLOWANCES	66
15.1	Time Allowance for Performance of Contract	
15.2	Entitlement to Change of Contract Time	
15.3	Weather Delays.....	
15.4	Notice of Delay.....	
15.5	No Damage for Design Builder Caused Delay	
15.6	Time Extension Without Compensation.....	
15.7	Compensable Delay.....	
15.8	Liquidated Damages	
16.	WORKING CONDITIONS AND PREVAILING WAGES	71
16.1	Use of Site/Sanitary Rules	
16.2	Protection of Work, Persons and Property	
16.3	Responsibility for Safety and Health	
16.4	Emergencies	
16.5	Use of Roadways and Walkways.....	
16.6	Nondiscrimination.....	
16.7	Prevailing Wages	
16.8	Environmental Controls.....	
16.9	Shoring Safety Plan	

1. **INVESTIGATIONS AND SUBCONTRACTORS.**

1.1 Investigation Required.

1.1.1 Prior to submitting a bid for this Project and prior to proceeding with the design and construction, the Design Builder must do all things referred to in Document 00 52 00 (Agreement) regarding the Design Builder's representations and warranties contained in Article 5 thereof. The Design Builder is charged with all information and knowledge that a reasonable contractor would ascertain from having performed this required pre-bid 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 paragraph 2.1 (Description of Work) of this Document 00 72 00 (General Conditions).

1.1.2 Conditions Shown or Indicated in the Contract Documents: The County warrants, and the Design Builder relies on the accuracy of limited types of information shown or indicated in the Contract Documents as they refer to underground conditions, Hazardous Materials reports, as-built conditions, or other conditions or obstructions, including such information contained in Documents 00 31 30 (Geotechnical Data and Existing Conditions).

1.1.2.1 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 pre-bid investigation. The Design Builder is required to make an independent investigation and verify existing above-ground conditions. In proceeding with the design and construction, the Design Builder shall rely on the results of its own independent investigation.

1.1.2.2 As to any subsurface condition shown or indicated in the Contract Documents, as well as those subsurface conditions identified in Documents 00 31 30 (Geotechnical Data and Existing Conditions), the Design Builder 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 Documents 00 31 30 (Geotechnical Data and Existing Conditions). 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 Documents.

1.1.3 Reference is made to Document 003130 (Geotechnical Data and Existing Conditions) for identification of:

1.1.3.1 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

1.1.3.2 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. These reports and drawings are not Contract Documents but as

provided in Document 00 31 30 (Geotechnical Data and Existing Conditions), the Design Builder may rely on the information in these reports and drawings. However, the Design Builder shall independently verify the information provided in the reports in developing the design of the Project and performing the Work.

- 1.1.4 Subsurface conditions affecting cost or quantities of the Work materially differing from those indicated in Documents 00 31 30 (Geotechnical Data and Existing Conditions) and elsewhere in the Contract Documents, or in the information supplied for informational purposes, will be compensated by the County. Compensation for unknown differing site conditions shall be allowed as provided in the Contract Documents.
- 1.1.5 Except for the reliance described above, except in the case of latent conditions not discoverable upon a reasonable pre-bid investigation, and except as otherwise provided in Documents 00 31 30 (Geotechnical Data and Existing Conditions), the Design Builder may not rely upon or make any claim against the County, or any of its consultants, with respect to: any unreasonable Design Builder interpretation of or unreasonable conclusion drawn from any technical data or other such data, interpretations, opinions or information, contained in such information.
- 1.1.6 Records of existing structures on or in the vicinity of the Site may be supplied in Document 00 31 30 (Geotechnical Data and Existing Conditions) or may be on file in the County's offices and may be examined by Design Builder (but subject to the conditions of Document 00 31 30 (Geotechnical Data and Existing Conditions)). The Design Builder 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 Documents. After contract award, the Design Builder shall conduct all necessary investigations and become familiar with any and all actual as-built conditions.
- 1.1.7 See paragraph 13.4 (Notice of Concealed or Unknown Conditions) of this Document 00 72 00 concerning notice of concealed or unknown conditions.

1.2 Design Builder and Subcontractors.

- 1.2.1 The Design Builder must list with its bid and provide required information for the major Subcontractors, Subconsultants and specifically identified designers (together for purposes of this Document 00 72 00, "Subcontractor") who will perform a portion of Work, as far as such persons or entities are known on the day Proposals are submitted. The Design Builder shall submit updated Subcontractor Lists to the County as they become reasonably available following contract award or the Notice to Proceed. The Design Builder shall provide the following information:
 - 1.2.1.1 Name of Subcontractor.
 - 1.2.1.2 Business address of Subcontractor.
 - 1.2.1.3 Telephone numbers and e-mail addresses of Subcontractor.

- 1.2.1.4 Brief description of portion of Work to be performed under subcontract.
- 1.2.1.5 Amount to be paid for Subcontractor's work, labor, or service.
- 1.2.1.6 The Subcontractor's California Contractor's State License Number or Professional License Numbers.
- 1.2.2 The Design Builder shall constantly give personal attention to faithful prosecution of Work, whether performed by the Design Builder'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.
- 1.2.3 Consistent with Public Contract Code §§ 4101 et seq., the Design Builder shall not substitute any other person or firm as a Subcontractor or Subconsultant in place of any of those listed in Bid or later (for actual building design or construction), nor shall any Subcontractor assign or transfer subcontract, or permit the same to be performed in whole or in part by any other Subcontractor without written approval of the County. Should the Design Builder thereafter let out or subcontract any portion of the Work in violation of this requirement, County shall have the right to assess the Design Builder a penalty of ten percent (10%) of the amount of the subcontract involved. The Design Builder shall provide the County with a complete copy of all executed subcontracts or final commercial agreements with Subcontractors and /or suppliers along with any modifications, amendments, or addenda thereto.
- 1.2.4 The Design Builder shall provide the County with a copy of any bid qualification forms to be utilized in bid packages prior to issuance of the bid package. The County will have the right to review and request inclusion of any qualification requirements it deems necessary to insure the qualifications of the bidders. The Design Builder and the County shall agree on a final form of the bid qualification forms. The Design Builder shall provide the County with all completed bid qualification forms submitted by each Subcontractor to which the Design Builder intends to award any subcontract. At the time the Design Builder provides the County with completed bid qualifications forms submitted by each Subcontractor to which the Design Builder intends to award any subcontract, the Design Builder shall advise the County in writing of the date by which the Design Builder intends to enter each subcontract with each Subcontractor. The Design Builder shall upon request provide the County with a copy of each contract which the Design Builder proposes to enter into for subcontracting or assigning any portion of Work. Within the County's sole discretion, any Subcontractor may be deemed not qualified to perform work if the County determines that the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason, at any time.
- 1.2.5 Subcontract agreements and assignments shall preserve and protect the rights of the County under the Contract Documents so that subcontracting and assignments will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, the Design Builder shall require the Subcontractor's written agreement (1) to be bound to the terms of Contract Documents; (2) to provide access to and the right to audit and the right to copy all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work; and (3) to assume vis-à-vis the Design Builder all the obligations and

responsibilities that the Design Builder assumes toward the County under the Contract Documents. The County shall be a designated intended third-party beneficiary of all subcontracts.

- 1.2.6 The Design Builder shall provide for the assignment to the County of all rights any Subcontractor may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by the Subcontractor under the Contract Documents.
- 1.2.7 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 able to complete the Work in accordance with the Contract Documents. The Design Builder may not use unqualified, inexperienced, or non-responsive Subcontractors. At a minimum, each Subcontractor and its proposed superintendent must have prior experience on at least two subcontracts of similar scope and complexity. In addition, Subcontractors must not have been terminated for default on any project within the previous three (3) years and must never have submitted a false claim to any public entity.
- 1.2.8 No subcontract or assignment of this Agreement or any part thereof shall relieve the Design Builder or Sureties of liabilities or obligations under this Contract.
- 1.2.9 No assignment by the Design Builder of the Contract or any part thereof, or funds to be received there under by the Design Builder, will be recognized unless such assignment has written approval of the County and Surety has been given due notice and approved of such assignment in writing.
- 1.2.10 The Design Builder shall require each of its Subcontractors to execute agreements containing indemnity provisions coextensive with those in this Agreement.
- 1.2.11 The County has the right to request all documentation that supports the Design Builder's selection of a Subcontractor. The County shall have the right of final approval as to the qualification(s) of a Subcontractor to perform its designated scope of work. Within the County's sole discretion, any Subcontractor may be deemed not qualified to perform work on the Project if the County or County's Representative determines that the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason.
- 1.2.12 The County reserves the right to issue payments to the Design Builder and Subcontractor jointly for Work performed under this Agreement. At least seven (7) Days before exercising that right, County must give to the Design Builder written notice of County's intent to issue any such joint payment and provide Design Builder the reasonable opportunity to respond thereto.

2. **SCOPE OF DESIGN BUILD RESPONSIBILITY.**

- 2.1 Description of Work. The Design Builder shall provide a complete and operable Project in accordance with this Contract, including providing, furnishing, and performing all Services and providing and furnishing all necessary supplies, housing, materials and equipment, and all necessary management, supervision, labor, and Services required for the engineering, design, coordination, procurement, quality assurance and inspection, construction, installation, Startup, Checkout, Testing, Maintenance, site cleanup, and the training of the County's personnel, all in conformity with the requirements, Legal

Requirements, criteria, Performance Guarantees, and warranties set forth in the Contract Documents. As part of providing a complete and operable Project, Design Builder shall, including but not limited to, coordinate and provide all necessary tie-ins to existing site utilities and shall coordinate and provide all necessary tie-ins to off-site utilities and Interconnection Facilities. County will pay all fees associated with any such connection except as is provided in paragraph 13.2.1 of this Document 007200 (General Conditions). The signature and seal of a licensed engineer or architect shall be obtained as necessary for compliance with the Legal Requirements.

2.2 All-Inclusive Design Build Obligation. Without limiting the generality of paragraph 2.1 (Description of Work) hereof, the Design Builder shall provide, at a minimum, the following Services and Materials and Equipment as further specified and described in Documents 01 11 10 (Summary of Work) and 01 11 14 (Summary of Work - Design Services and Deliverables) provided, however, that these sections shall not be construed in any way to limit the Design Builder's obligations hereunder to design, engineer, furnish, construct, Checkout, Startup, and Test a complete and operable Project (including tie-ins to utilities and Interconnection Facilities) in accordance with the provisions of this Agreement.

2.2.1 The Design Builder 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 tie-in to the Interconnection Facilities. The Design Builder 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 disciplines including but not limited to architectural, civil, structural, mechanical, electrical, instrumentation and control systems.

2.2.2 The Design Builder 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 tie-in to the Interconnection Facilities. The Design Builder 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 Specified 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 and safe execution and completion of the Work, including any of the utilities, as required). Up to the time of Completion, as defined in 1.5.2.16 of Document 01 42 00 (References and Definitions), the Design Builder shall maintain all Materials and Equipment in accordance with manufacturer's requirements while such Materials and Equipment are in transit or in the care and custody of the Design Builder. Should the Design Builder cause damage to public or private roadways in its performance of the Work, the Design Builder shall make repairs as necessary without cost to the County. This excludes normal wear and tear from operations required for construction.

2.2.3 The Design Builder 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 Agreement. At the County's request, the Design Builder shall replace, at the Design Builder's expense, any individual if it is

determined by the County that such individual's continued presence would jeopardize the quality or timely completion of the Work.

- 2.2.4 Whenever required by applicable laws or the Contract Documents, the Design Builder shall employ licensed personnel as necessary to perform engineering, design, architectural, or other professional services in the performance of the Work. 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 Agreement.
- 2.2.5 The Design Builder 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. The Design Builder shall adopt and implement reasonable policies and practices designed to avoid work stoppage, slowdowns, disputes and strikes.
- 2.2.6 The Design Builder is solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, and the County shall not be responsible for or exercise any control over the actions or omissions of the Design Builder, any Subcontractor, supplier, or any of their employees or agents performing any of the Work or the Design Builder's warranty obligations. The Design Builder shall prosecute the Work continuously and diligently and complete the Work in accordance with all requirements of this Agreement.
- 2.2.7 Design Builder 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.
- 2.2.8 Design Builder is responsible for the layout of the Work and shall perform all necessary surveying during the construction of the Project and tie-in to the Interconnection Facilities. 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 Design Builder. The Design Builder shall preserve all permanent survey construction monuments and benchmarks. Prior to the completion date, the Design Builder shall accurately correct all Project (including tie-ins to Interconnection Facilities) documents to as-built conditions and deliver to the County these as-built documents in accordance with the Contract Documents. Such documents shall show the location of the Project (including tie-ins to Interconnection Facilities) 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.
- 2.2.9 The Design Builder 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. The Design Builder shall be responsible for Checkout, Startup and Testing of the Project 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 Documents.

- 2.2.10 The Design Builder shall provide, upon request of the County, reasonable temporary facilities to allow the County to review, inspect, and evaluate the Work in accordance with the Contract Documents.
- 2.2.11 Except for safety and warning signs, the Design Builder shall not install any signs on the Site without the express written consent of the County.
- 2.2.12 The Design Builder is responsible for all Site security until Completion, as defined in 1.5.2.16 of Document 01 42 00 (References and Definitions), or termination of the Agreement. Such security shall include, to the extent reasonably necessary, barriers, lighting, controlled access, and other measures required to prevent vandalism, theft, and danger to personnel, the Project, Materials and Equipment. The nature and extent of Site security measures shall be determined by the Design Builder, and the County relies upon the Design Builder's means and methods to provide adequate and appropriate Site security. After responsibility for Site security is returned to the County pursuant to this paragraph.
- 2.2.13. Design Builder will be subject to the County's Site security regulations and restrictions.
- 2.2.14 The Design Builder shall prepare or cause to be prepared and shall furnish to County all drawing logs, drawings, manufacturers' drawings and data, supplier manuals and operating manuals in accordance with the Contract Documents.
- 2.2.15 The Design Builder shall ensure that the County and its representatives shall, at all times, have access to the Site for all purposes. In order to allow the County and its representatives to be present, the Design Builder shall give the County at least three (3) Days advance notice of any system or equipment Checkout or Testing. If the County desires access to any places where Work is being performed or from which Materials and Equipment are being obtained, the Design Builder shall provide or arrange reasonable access thereto and shall provide County reasonable advanced notice of any factory tests or other off-site tests. The Design Builder shall maintain the Site in a safe condition to permit the County and any person authorized in writing by the County to inspect and review all field work during working hours, including Materials and Equipment, installation, calibration, Startup and Testing.
- In addition, the Design Builder shall provide the participating agencies having jurisdiction over the project reasonable unrestricted access to observe, monitor, and inspect the Project. The Agencies' access to observe, monitor and inspect shall include the right to review all documents and files relating to the Project, as well as construction on the Site, including all tests and inspections relating to design or construction of the Project.
- 2.2.16 As part of the procurement of equipment, the Design Builder shall provide the County a list of recommended operating spare parts, which list shall include all relevant costs and ordering lead time information with terms and conditions. If requested, the Design Builder shall procure such operating spare parts from Suppliers, as requested by the County, on behalf of the County. The cost of such operating spare parts shall be covered by change order.
- 2.2.17 When any equipment or portion of the Work is damaged, the Design Builder shall inform the County as soon as possible and provide the County a damage report

detailing such occurrence, any required repairs, and the estimated duration of such repairs.

2.2.18 The Design Builder shall provide to the County all tests and measurements, laboratory analyses, and reports made or prepared in connection with the Work.

2.2.19 The Design Builder agrees that, in light of the high degree of confidence and trust that the County has reposed in the Design Builder: (a) the Design Builder has the duty to act in the County's best interests at all times throughout the course and performance of its design responsibilities pursuant to this Agreement; and (b) when acting in any role other than as a designer, the Design Builder has a duty to protect the County's interests and shall act in such a manner as to consider the County's interests to be equal to the interest of the Design Builder throughout the course and performance of its non-design responsibilities pursuant to this Agreement. Notwithstanding anything to the contrary, nothing contained herein shall create any fiduciary obligation on behalf of the Design Builder to the County.

3. **CONTRACT AWARD AND COMMENCEMENT OF THE WORK.**

3.1 Commencement of Work.

3.1.1 The Contract Time will commence to run on the day indicated in Document 00 55 00 (Notice to Proceed). As a condition to the County signing Document 00 52 00 (Agreement), however, the Design Builder shall deliver to County the executed agreements, forms, bonds, and insurance documents required by Document 00 21 00 (Request for Proposals from Bidders) in the required quantities and within the required times. A Notice to Proceed may be given at any time within thirty (30) Days after the County's execution of Document 00 52 00. See also Article 15 (Time Allowances) of this Document 00 72 00.

3.1.2 The Design Builder shall start to perform the Work on the date when the Contract Time commences to run, but no work shall be done at the Site prior to the date on which the Contract Time commences to run.

3.2 Mobilization.

3.2.1 Mobilization includes moving onto the Site of all plant and equipment; furnishing and erecting plants, temporary buildings, and other construction facilities; all as required for the proper performance and completion of the Work and by section 01 50 00 (Temporary Facilities and Controls). 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:

3.2.1.1 Moving onto the Site the Design Builder's plant and equipment as required.

3.2.1.2 Installing temporary construction power and wiring.

3.2.1.3 Establishing fire protection system for its temporary facilities.

3.2.1.4 Establishing construction water supply.

- 3.2.1.5 Providing field office trailers for the Design Builder with all Specified furnishings and utility services including telephones and internet. The Design-Builder may locate its field office trailers as agreed to in advance by County and Design Builder.
- 3.2.1.6 Providing connections to on-site sanitary facilities and potable water facilities as Specified or providing portable toilets/port-a-potties as as specified in section 01 50 00 (Temporary Facilities and Controls).
- 3.2.1.7 Arranging for and erection of the Design Builder's work and storage yard(s).
- 3.2.1.8 Submittal to the County of all required Subcontractor insurance certificates and bonds, if required.
- 3.2.1.9 Posting all OSHA required notices and establishment of safety programs.
- 3.2.2 Within fifteen (15) Days following issuance by the County of a Notice of Award, the Design Builder shall submit to the County, for its review and concurrence, a Mobilization Plan including initial schedule and staffing plan for both design-side staff and construction-side staff.
 - 3.2.2.1 The Mobilization Plan is subject to review and concurrence by the County prior to, and as a condition precedent to, execution of the Contract.
 - 3.2.2.2 The Mobilization Plan shall be developed in both narrative and graphic format, and shall include, at a minimum, the following:
 - 3.2.2.2.1 Initial design activities, which include but are not limited to establishing on-site office space for design personnel, implementing an online project management system, and verifying existing site conditions and utilities.
 - 3.2.2.2.2 Initial construction activities, which include but are not limited to interior and exterior demolition, any proposed site excavation and perimeter structural shoring, parking and traffic control, temporary facilities and staging, followed by construction of interior improvements.
 - 3.2.2.2.3 A detailed sequential plan for commencement of interior construction consistent with the scheduling requirements of this Agreement for all design, demolition, construction, and other activities to be undertaken during the first sixty (60) Days following execution of the Contract.

4. **BONDS AND INSURANCE.**

4.1 Bonds.

- 4.1.1 Within the time period specified in Document 00 21 00 (Request for Proposals from Bidders), the Design Builder shall provide to the County the following bonds

for all of the Work, as described in Document 01 12 16 (Work Sequence). Design Builder shall provide two (2) bonds pursuant to paragraphs 4.1.1.1 and 4.1.1.2.

4.1.1.1 For all of the Work, provide one (1) corporate surety bond in the form set forth in Document 00 61 10 (Construction Performance Bond) to guarantee faithful performance of all construction and demolition work, including bonds, insurance, permits and fees under the Contract for that phase of the Work ("Performance Bond"). The performance bond shall be in an initial sum not less than one hundred percent (100%) of the amount of the value of non-design construction and demolition Work to be performed by the Design Builder under this Agreement and shall obligate the surety to faithfully perform not less than one hundred percent (100%) of the amount of the value of non-design construction and demolition Work for the entire Project.

4.1.1.2 For all phases of the Work, provide one (1) corporate surety bond in the form set forth in Document 00 61 20 (Construction Labor and Material Payment Bond) to guarantee payment of wages for services engaged and of bills contracted for services, materials, supplies, and equipment used in performance of the Contract for that phase of the Work. In accordance with Civil Code section 9550 et seq., the Construction Labor and Material Payment Bond shall obligate a surety to guarantee payment in an amount equal to the entire Contract Sum for the Project.

4.1.2 Corporate sureties issuing payment and performance 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-7 or better.

4.1.3 In the event of increases in the Contract Sum by Change Orders, the Design Builder shall submit to the County evidence of additional bond coverage for such increases in the Contract Sum. The Design Builder shall be compensated for such additional bond coverage.

4.2 Insurance.

4.2.1 See Document 00 73 20 (Insurance Requirements), incorporated herein by reference.

5. **DRAWINGS AND SPECIFICATIONS.**

5.1 Intent. The Contract Documents are complementary; what is called for by one is as binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project and individual systems therein to be designed and constructed in accordance with the requirements of the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the requirements of the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result shall be furnished and performed whether or not specifically required. When words, phrases, or abbreviations, which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words, phrases, or abbreviations shall be interpreted in accordance with that meaning. Any non-

technical words, phrases or abbreviations shall be interpreted in accordance with their commonly understood meanings.

- 5.2 Drawing Details and Specification Descriptions. The Drawings and Specifications (CSI 2004 Master Format) of the Construction Documents establish performance criteria the final design and construction must meet and, along with the warranty and other requirements in the Contract Documents, establish the minimum design, material, quality, workmanship, and other standards required under the Contract Documents. The Design Builder has full “turnkey” responsibility to deliver the fully functional, operational Project described in Document 01 11 10 (Summary of Work) as referenced in the Contract Documents.
- 5.3 Specifications and Drawings Do Not Control Division of Work. The Divisions and Sections of the Specifications and the identifications of any Drawings shall not control Design Builder in dividing the Work among Subcontractors or suppliers or delineating the work to be performed by any specific trade.
- 5.4 Interpretation of Contract, Drawings and Specifications.
- 5.4.1 Should any discrepancy or ambiguity appear or any misunderstanding arise as to the importance of anything contained in the Contract and the Drawings and Specifications included in the Contract Documents, the matter shall be referred to the County, who shall issue with reasonable promptness so as not to delay the Design Builder’s performance such written clarifications or interpretations of the requirements, which shall be consistent with the intent of and reasonably inferable from the Contract and Drawings and Specifications. Reasonable promptness may vary with each issue; however, it is the goal of the County to respond in no longer than five (5) Business Days. It is the intent of the Contract Documents that the Design Builder shall have responsibility to provide a complete and comprehensive design (and construction thereof) for the Project in order to allow a complete and fully operational Project on a “turnkey” basis. The County’s review of the Design Builder’s designs, shop drawings, samples and submittals shall not relieve the Design Builder of its responsibility for a complete design complying with the requirements of the Contract Documents; but rather, such review shall be in furtherance of the County’s monitoring and accepting the design as developed and issued by the Design Builder, consistent with these Contract Documents.
- 5.4.2 The Contract Documents may omit modifying words such as “all” and “any,” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.
- 5.4.3 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended

only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

- 5.4.4 Design Builder shall submit to the County requests for information (RFIs) as Design RFIs (DRFIs). County shall submit to the Design Builder requests for information as Owner RFIs (ORFIs).
- 5.4.5 Design Builder's internal RFI process shall include identifying to the County any internal RFIs that will impact performance or program requirements, functionality, durability, maintenance and finish appearance.
- 5.5 Checking/Updating of Drawings. The Design Builder 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.
- 5.6 Necessary and Incidental Work. The Design Builder 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 normally or customarily required as a part of the Work shown on Drawings or described in Specifications. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and the expense of incidental work shall be included in price Proposal and Contract Sum.
- 5.7 Standards to Apply Where Detailed and/or Performance Specifications Are Not Furnished. Wherever in the Contract Documents, or in any orders given by the County, it is provided that the Design Builder 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.
- 5.7.1 Design and construction shall meet the standards required by the Contract Documents 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.
- 5.7.2 Materials or manufactured articles shall be of the grade, in quality and workmanship, consistent with the requirements of this Agreement 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. The Work for which no detailed specifications are set forth herein shall conform to the requirements of this paragraph 5.7. All such Work shall be consistent with the Contract Documents.
- 5.8 Precedence of Documents. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
- 5.8.1 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).
- 5.8.2 Signed Document 00 52 00 (Agreement

- 5.8.3 Document 00 73 13 (Special Conditions)
- 5.8.4 Document 00 72 00 (General Conditions)
- 5.8.5 Project Manual Division 00 Bidding and Contracting Requirements
- 5.8.6 Project Manual Division 01 General Requirements (as modified, if at all, by Document 00 52 00 (Agreement)).
- 5.8.7 Design Builder's Proposal as defined in 6.1 of Document 00 52 00 (Agreement).
- 5.8.8 Design Criteria Documents (as modified, if at all, by Document 00 52 00 (Agreement)).
 - 5.8.8.1 Design Criteria Documents – Performance Specifications
 - 5.8.8.2 Design Criteria Documents – Basis of Design
- 5.8.9 The Construction Documents after having been accepted by the County and approved for all required permits. The Construction Documents will supplement and enhance, but not supplant, the Contract Documents. If a conflict is later discovered between the Contract Documents and the Construction Documents, the Contract Documents shall prevail unless the County has explicitly agreed in writing to specific revisions or deviations to the Contract Documents.
- 5.8.10 Written numbers over figures, unless obviously incorrect.
- 5.8.11 Figured dimensions over scaled dimensions.
- 5.8.12 Large-scale Drawings over small-scale Drawings.
- 5.8.13 Any conflict between Design Criteria Documents 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.
- 5.8.14 Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete the Work required by Contract Documents, will be resolved in favor of the actual quantities.
- 5.8.15 If there is any discrepancy or ambiguity concerning the character, nature, quality or quantity of Work, product, system, or materials required under the Contract Documents, the Design Builder 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.
- 5.8.16 If there is any discrepancy or ambiguity between a specified material, product, or system name or description and the model name, number, or code, the conflict will be resolved in favor of the description or name.

5.9 Design Deliverables, Shop Drawings and Submittals to be Furnished by Design Builder in Addition to Completed Design Drawings.

- 5.9.1 The Design Builder shall submit to the County for review a schedule of all deliverables required in Document 01 11 14 (Summary of Work Design Services and Deliverables), identifying each required deliverable and the date on which it will be submitted to the County ("Schedule of Deliverables"). A preliminary Schedule of Deliverables will be submitted within sixty (60) Days of the Notice to Proceed. The County understands that a more complete Schedule of Deliverables will not be available until the beginning of the Construction Documents Phase as defined in Document 01 11 14 (Summary of Work Design Services and Deliverables). A more complete Schedule of Deliverables will be submitted to the County when the final design is submitted to the County at the end of the Design Development Phase as defined in Document 01 11 14 (Summary of Work Design Services and Deliverables).
- 5.9.2 Due to the design-build nature of the Project, the Design Builder and the County will jointly develop a list of submittals and shop drawings, which are to be submitted to the County. In accordance with Document 01 30 00 (Submittal Procedures), the Design Builder shall submit to the 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 one hundred percent (100%) Construction Drawings or final bid package procurement, whichever is later. Design Builder will endeavor to provide updated partial Schedules of Submittals as available every sixty (60) Days through the course of the "fast track" process of the Project. Shop drawings and submittals shall be in addition to the Design Builder's design developed pursuant to this Agreement.
- 5.9.3 The Design Builder shall submit submittals, Product Data, Samples and Shop Drawings to the County for review in strict accordance with Document 01 30 00 (Submittal Procedures). Shop Drawings means drawings, submitted to the Design Builder by subcontractors, manufacturers, supplier, or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment. Submission of a Submittal or Shop Drawing shall constitute the Design Builder's representation that all requirements of Document 01 30 00 (Submittal Procedures) have been complied with. All Submittals and Shop Drawings will be identified as the County may require and made in the number of copies specified in Document 01 30 00 (Submittal Procedures). The Design Builder shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design Builder's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review. The Design Builder shall submit Shop Drawings and samples that relate to finish materials and products approved by the Architect of Record.
- 5.9.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Work for which submittals are required, how Design Builder proposes to conform to the

information given and the design concept expressed in the Contract Documents. The Design Builder shall review, approve, and submit to the County's Representative Shop Drawings, Product Data, Samples, and similar Submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of County or of Separate Contractors. Submittals made by the Design Builder that are not required by the Contract Documents may be returned without action by County. The Design Builder shall perform no portion of the Work requiring Submittal and review of Shop Drawings, Product Data, Samples, or similar Submittals until the respective submittal has been reviewed by County's Representative and no exceptions have been taken by the County's Representative. Such Work shall be in accordance with approved Submittals and the Contract Documents. By approving and submitting Shop Drawings, Product Data, Samples, and similar Submittals, Design Builder represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such Submittals with the requirements of the Contract Documents and Shop Drawings for related Work.

5.9.5 If the Design Builder discovers any conflicts, omissions, or errors in Shop Drawings or other Submittals, Design Builder shall notify the County's Representative and receive instruction before proceeding with the affected Work. The Design Builder shall be responsible to correct to the satisfaction of the County, any conflicts, omissions, or errors in Shop Drawings or other Submittals.

5.9.6 The Design Builder shall not be relieved of responsibility for deviations from requirements of the Contract Documents by County's Representative's review of Shop Drawings, Product Data, Samples, or similar Submittals, unless the Design Builder has specifically informed the County's Representative in writing of such deviation at the time of submittal and the County's Representative has given written approval of the specific deviation. The Design Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar Submittals by County's Representative's review, acceptance, comment, or approval thereof.

The Design Builder shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar Submittals, to revisions other than those requested by County's Representative on previous Submittals. The County will review first resubmittal of Shop Drawing at its cost. The County reserves the right to reduce the Contract Sum by Change Order for its cost for any subsequent reviews of Shop Drawings, Product Data, or other resubmittals.

5.9.7 Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in the Work as the standard. Any variation in quality must be approved by the County.

5.9.8 Materials and equipment incorporated in the Work shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.

5.9.9 The Design Builder shall not perform work requiring submission of a Submittal, Product Data, Samples or Shop Drawing prior to submission and favorable review by the County of the Submittal or Shop Drawing. The County's review of Submittals or Shop Drawings shall be performed so as not to delay the Design

Builder's performance. Where a Submittal or Shop Drawing is required by the Contract Documents or shop drawings accepted by the County, Architect or Engineer of Record, 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 the Design Builder. The County's review of Shop Drawings, samples and Submittals shall not relieve the Design Builder of its responsibility for a complete design complying with the requirements of the Contract Documents; but rather, such review shall be in furtherance of the County's monitoring and accepting the design as developed and issued by the Design Builder, consistent with these Contract Documents.

5.10 Construction Documents.

5.10.1 Upon receipt of the Notice to Proceed, the Design Builder shall instruct the Architect to commence the design of the building systems and the preparation of the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. The County's review of the Construction Documents shall be conducted in accordance with the approved Project Master Schedule with procedures set forth in this Agreement. Such review shall not relieve the Design Builder from its responsibilities under the Agreement. Such review shall not be deemed an approval or waiver by the County of any deviation from, or of the Design Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted by the Design Builder and approved by the County.

5.10.2 However, it is acknowledged by the parties hereto that inherent in a design build concept, bridging or otherwise, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times.

The Design Builder will limit the Construction Document packages for construction, including any deferred approval packages, to a reasonable number as approved by the Regulatory Agency. The Project Master Schedule shall indicate the times for the County to review the completion of each such portion of the Construction Documents prior to submittal to the Regulatory Agency and a reasonable time for Agency review of same.

5.10.3 The Design Builder shall submit completed packages of the Construction Documents for review by the Permitting Agencies, as required, and other authorities having jurisdiction at the times indicated on the Project Master Schedule and as defined in the Scheduling Specification. Review meetings between the Design Builder and Permitting Agencies to review the Construction Document packages shall be scheduled and held so as not to delay the Work.

5.10.4 The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to the County for review.

- 5.10.5 The Design Builder shall retain and pay expenses of a civil engineer or land surveyor to establish on the Site the required Primary Controls, including but not limited to benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be licensed in the State of California. Subsequent surveying and layout may be performed by the Design Builder's qualified personnel.
- 5.10.6 The Design Builder shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction and shall require the engineer or surveyor to replace control points which become lost or destroyed.
- 5.10.7 The Design Builder shall verify the location and depth (elevation) of all known existing utilities and services before performing any excavation Work.

6. CONSTRUCTION BY THE COUNTY OR BY SEPARATE CONTRACTORS.

6.1 The County's Right to Perform Construction and to Award Separate Contracts.

- 6.1.1 For the purpose of this paragraph 6.1 alone, the "County" refers to and includes the County Facility.
- 6.1.2 The County may perform with its own forces, construction or operations related to the Project. The 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 these Contract Documents, or may have utility owners perform other work.
- 6.1.3 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 Documents in each case shall mean the Contractor who executes each separate County/Contractor Contract.
- 6.1.4 If the Design Builder fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the design or construction phases, fails to maintain the Project Master Schedule, or otherwise fails to comply with any material term of the Contract Documents, and fails within two (2) Business Days after receipt of notice from the County to promptly commence and thereafter diligently continue to completion the correction of such failure, the County may, without prejudice to other remedies the County may have, correct such failure at the Design Builder's expense. In such case, the County will be entitled to deduct from payments then or thereafter due the Design Builder the cost of correcting such failure, including compensation for the additional services and expenses of the County made necessary thereby. If payments then or thereafter due the Design Builder are not sufficient to cover such amounts, the Design Builder shall pay the additional amount to the County.
- 6.1.5 When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, County shall notify the Design Builder of such separate contracts before work on the Site pursuant to those contracts begins. County shall give such notice to the Design Builder with

enough time to reasonably allow Design Builder to coordinate as required by paragraph 6.2 (Mutual Responsibility) below.

6.2 Mutual Responsibility.

- 6.2.1 The Design Builder shall afford all other separate contractors, utility owners, and the County (if the County is performing work with its own forces), proper and safe access to the Site, including such access to other lands and facilities designated in the Contract Documents for use by the Design Builder 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.
- 6.2.2 The Design Builder shall coordinate its 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 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.
- 6.2.3 Unless otherwise provided in the Contract Documents, the Design Builder 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. The Design Builder 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 the County and the others whose work will be affected.
- 6.2.4 The duties and responsibilities of the Design Builder under paragraphs 6.2.1 through 6.2.3 above are for the benefit of the County and also for the benefit of such utility owners and other contractors working at the Site.
- 6.2.5 To the extent that any part of the Design Builder's Work is to interface with the Work performed or installed by others, the Design Builder shall inspect and measure the in-place work and promptly report in writing to the County any defect in such in-place work that will impede or increase the cost of the Design Builder's interface unless corrected. The County will require the contractor responsible for the defective work to make corrections so as to conform to the Contract Documents. If the Design Builder fails to measure, inspect and/or report defects that are reasonably discoverable, all costs of accomplishing the interface acceptably shall be borne by the Design Builder. This provision shall be included in any and all other contracts or subcontracts for the Work to be performed where such a conflict could exist.

6.3 County Authority Over Coordination.

- 6.3.1 The County shall have authority over coordination of the activities of multiple contractors in those cases where the County or 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 the County with respect to coordination of the activities of multiple prime contractors and utility owners, however, shall not in any manner relieve the Design Builder of its obligation to other contractors and utility owners to coordinate its work with utility owners and other contractors as specified above.) The Design Builder shall promptly notify the County in writing when another contractor on this Project fails to coordinate its work with the Work of this Agreement.

- 6.3.2 The Design Builder shall suspend any part of the Work herein Specified or shall carry on the same in such manner if directed by the County when such suspension or prosecution is necessary to facilitate the work of other contractors or workers. No damages or Claims, as defined in Article 12 (Claims by Design Builder) below, by the Design Builder will be allowed therefore to the extent the suspension or work change is due to the Design Builder's failure to perform its obligation 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 County employed contractor to coordinate its work with the Design Builder and other contractors and utility owners, then resulting damages or Claims by Design Builder will be allowed. The County reserves the right to back charge the Design Builder for any damages or claims of other contractors incurred as a result of the Design Builder's failure to perform its obligations to coordinate its work with other contractors and utility owners, and in its discretion, the County may deposit the funds retained with a Court of competent jurisdiction pursuant to applicable interpleader procedures and the Design Builder releases the County of any further liability regarding such funds.
- 6.3.3 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 other contractors.

7. THE COUNTY AND PAYMENT.

7.1 The County's Representatives.

- 7.1.1 The designated authorized representative(s) of the County, or the County's Project Manager will provide limited administration of the Contract as provided in the Contract Documents and will have limited authority to act on behalf of the County as set forth in the Contract Documents.
- 7.1.2 The County shall designate in the Contract Documents or otherwise in writing, from time to time, one or more County Representative (referred to herein as "County's Representative" or "County Representative") authorized to act on the County's behalf with respect to the Project, together with the scope of his/her respective authority. Functions that this Agreement provides will be performed by the County may be delegated by the County to its Representative only by written notice to the Design Builder from the County. The Design Builder shall not be entitled to rely on directions (nor shall it be required to follow the directions) from anyone outside the scope of that person's authority as set forth in written authorization pursuant to this Agreement. Directions and decisions made by the County's authorized representatives within the scope of this authorization shall be binding on the County.
- 7.1.3 During the term of this Agreement, the County's Representative shall have the right to review Design Builder's Design Professionals' Work at such intervals as deemed appropriate by the Representative. However, no actions taken during such review or site visit by the County Representative, shall relieve the Design Builder of any of its obligations of single-point responsibility for the design and construction of this Project nor form the basis for a Claim if such actions extend the Contract Completion Date beyond the Contract Time.
- 7.1.4 The County's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods,

techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Design Builder's responsibility.

- 7.1.5 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the County and the Design Builder shall communicate through the County's Representative. Communications by Design Builder with County's consultants and County's Representative's consultants shall be through the County's Representative. Communications by the County and the County's Representative with Subcontractors will be through the Design Builder. Communications by the Design Builder and Subcontractors with Separate Contractors shall be through County's Representative. Should any direct communications between Design Builder and County's consultants, architects or engineers not identified in Article 2 of Document 00 52 00 (Agreement) occur during field visits or by telephone, Design Builder shall immediately confirm them in a written document copied to the County. The Design Builder shall not rely on oral or other non-written communications.
- 7.1.6 Based on the County's Representative Project site visits, review of Design Work, and evaluations of Design Builder's Applications for Payment, the County's Representative will recommend amounts, if any, due the Design Builder and will issue Payment in such amounts.
- 7.1.7 The County's Representative will have the authority to reject the Work, or any portion thereof, which does not conform to the Contract Documents. The County's Representative will have the authority to stop the Work, or any portion thereof whenever the County's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents, the County's Representative will have the authority to require additional inspection or testing of the Work in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed.

However, no authority of the County's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility, of the County or the County's Representative to the Design Builder, or any person or entity claiming under, or through, the Design Builder.

- 7.1.8 The County's Representative and Agencies Having Jurisdiction (a) will have the authority to conduct inspections in connection with any Beneficial Occupancy pursuant to paragraph 13.25 (Beneficial Occupancy) below, and to determine the dates of Substantial Completion, and Final Completion; (b) will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by the Design Builder; and (c) will issue a final Certificate For Payment upon the Design Builder's compliance with the requirements of the Contract Documents.
- 7.1.9 The County's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by the Design Builder. Should the Design Builder discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether the Work is within the scope of the

Contract Documents; then, before proceeding with the Work affected, the Design Builder shall notify the County's Representative in writing and request interpretation, or clarification. The County's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should the Design Builder proceed with the Work affected before receipt of a response from the County's Representative, any portion of the Work which is not done in accordance with the County's Representative interpretations, clarifications, instructions, or decisions shall be removed or replaced at the direction of the County's Representative and Design Builder shall be responsible for all resultant costs.

7.2 Means and Methods of Design and Construction.

7.2.1 Subject to those rights specifically reserved in the Contract Documents, the County shall not supervise, direct, or have control over, or be responsible for, the Design Builder'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 the Design Builder to comply with laws and regulations applicable to the furnishing or performance of the Work.

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

7.3 Receipt and Processing of Applications for Payment. As required by Document 01 29 00 (Payment Procedures), the Design Builder shall prepare and submit Applications for Payment and warrant title to all Work covered by each Application for Payment. The County will review the Design Builder's Applications for Payment and make payment thereon, and the Design Builder shall make payments to Subcontractors, subconsultants suppliers and others, as required by Document 01 29 00 (Payment Procedures).

8. **CONTROL OF THE WORK.**

8.1 Supervision of Work by Design Builder.

8.1.1 The Design Builder 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 Documents. The Design Builder 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 Design Builder shall be responsible for ensuring that the completed Work complies accurately with the Contract Documents.

8.1.2 The Design Builder shall keep on the Site at all times during Work progress on the Site a competent resident Superintendent, who shall not be replaced without the express written consent of the County. The Superintendent may not perform the Work of any trade, pick-up materials, or perform any Work not directly related to the supervision and coordination of the Construction Work at the Project site when work is in progress. The Superintendent shall be the Design Builder's representative at the Site and shall have complete authority to act on behalf of the Design Builder. All communications given to, and received from, the Superintendent shall be as binding on the Design Builder. Failure to maintain a Superintendent on the Project site at all times Work is in progress shall be considered a material breach of this Agreement, entitling the County to terminate

the Contract or, alternatively, issue a stop Work order until the Superintendent is on the Site.

- 8.1.3 The Design Builder shall have and maintain at the Site a full-time Quality Control Manager, who will have duties in addition to quality control, and a project manager whose duties shall include providing a quality control document to the County that the Work has been reviewed and either found to meet the terms and conditions of the Contract Documents or has been found deficient and corrective action will be taken promptly.
- 8.2 Observation of Work by County. The County may observe and monitor the design and construction through its agents, employees, consultants or others. The Design Builder in no way is relieved of any responsibility by the activities of the County in this regard.
- 8.3 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 the Design Builder shall provide proper and safe facilities therefore, 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. Furthermore, Design Builder shall permit the Regulatory Agency, or its authorized agents, to have access to the project staff and facilities whenever project activities are in progress and ensure that all Design Builder(s) will provide proper facilities for access, monitoring, and inspection.
- 8.4 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 with the County and/or the regional notification center Underground Service Alert ("USA"). Design Builder 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 the County are suspected to exist. Design Builder shall be alert to their existence; if they are encountered, The Design Builder shall immediately report to County for disposition of the same. In addition to reporting if any utility is damaged, the Design Builder shall take appropriate action as provided in this Document 00 72 00. Additional compensation or extension of time on account of utilities not shown or otherwise brought to the Design Builder's attention, including reasonable action taken to protect or repair damage, shall be determined as provided in this Document 00 72 00.
- 8.4.1 At no additional cost to the County, the Design Builder shall incorporate into the Work main or trunk line utilities identified in the Contract Documents 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. The Design Builder shall take immediate action to restore any in-service installations damaged by the Design Builder's operations. Should the County determine that the Design Builder has not responded in a timely manner or not diligently pursued completion of the Work, the County may restore service and deduct the costs of such action by the County from the amounts due under the Contract.
- 8.4.2 Consistent with Government Code § 4215, as between the County and the Design Builder, the 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 Documents. The County will compensate for the cost of locating and repairing damage not due to the Design Builder's failure to exercise reasonable care, in the removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents with reasonable accuracy, and equipment on the Project necessarily idled during such work.

8.4.3 Prior to performing Work at the Site, the Design Builder 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 the County, prior to commencing other Work in proximity to such known underground utilities or installations that can be readily inferred from adjacent surface improvements, the Design Builder 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.

8.4.4 Nothing in this Document 00 72 00 shall be deemed to require the County to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred by the Design Builder 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. The Design Builder shall immediately secure all available information and notify the County and utility, in writing, of its discovery, while performing Work under the Contract Documents, of any utility facilities not identified in the Drawings and Specifications.

8.5 Underground Facilities.

8.5.1 Before commencing work of digging trenches or excavation, the Design Builder shall review all information available regarding subsurface conditions, including but not limited to information supplied in Document 00 31 30 (Geotechnical Data and Existing Conditions), and subject to the terms and conditions of these documents, Design Builder shall also comply with Government Code §§ 4216 through 4216.9, and in particular § 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 (2) Business Days, but no more than fourteen (14) 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, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide a ticket 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. A ticket shall be valid for 28 days; if work continues beyond 28 days, the excavator shall renew the ticket by the end of the 28th day.

8.5.2 The Design Builder shall contact USA/8-1-1 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. The Design Builder is charged with knowledge of all subsurface conditions reflected in USA records. Prior to commencing excavation or trenching work, the Design Builder shall provide County with copies of all USA records secured by the Design Builder. Design Builder shall advise County of any conflict between information provided in Document 00 31 30 (Geotechnical Data and Existing Conditions), the Drawings and that provided by USA records. The Design Builder's excavation shall be subject to and comply with the Contract Documents, including without limitation Article 2 (Scope of Design Build responsibility) and paragraph 8.4 (Existing Utilities) of this Document 00 72 00.

- 8.5.3 In the case of any Underground Facilities that are located on County property and are used to furnish services on the County property or are under the operation and control of the County, or in any other case in which the USA does not provide a ticket and notify its members that have subsurface installations of the area of the proposed excavation, then the Design Builder shall be fully responsible for locating the Underground Facilities and protecting such Underground Facilities during excavation. In locating the Underground Facilities, the Design Builder 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 Design Builder. The Design Builder 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 Documents, the Design Builder shall determine the exact location of the Underground Facilities by excavating with hand tools within the area of the location of the Underground Facilities.

Design Builder 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 Design Builder under the Contract Documents and at law and the Design Builder 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.

- 8.5.4 The cost of all of the following will be included in the Contract Sum and the Design Builder shall have full responsibility for (a) reviewing and checking all available information and data including, but not limited to, Document 00 31 30 (Geotechnical Data and Existing Conditions) and information on file at USA; (b) locating all Underground Facilities shown or indicated in the Contract Documents, 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 back-hoeing and pot-holing; (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.
- 8.5.5 If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by County or in information on file at USA or is otherwise reasonably available to the Design

Builder, then the Design Builder 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 paragraph 16.4 (Emergencies) of this Document 00 72 00), identify the owner of such Underground Facility and give written notice to that owner and to County. During such time, the Design Builder shall be responsible for the safety and protection of such Underground Facility.

8.5.6 The Design Builder 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:

8.5.6.1 Was not shown or indicated in the Contract Documents or in the information supplied pursuant to Document 00 31 30 (Geotechnical Data and Existing Conditions) or in information on file at USA; and could not be readily inferred from surface improvements, and

8.5.6.2 The Design Builder represents that it has taken the necessary steps to ascertain the nature, location and extent of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work, such as: (a) conditions bearing on transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) seasonal weather patterns; (d) observable physical conditions at the Project Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed, prior to and during the performance of the Work.

8.5.6.3 To the extent the Design Builder encounters subsurface conditions or hazardous materials which differ materially from that described in the Contract Documents, or actually known by the Design Builder, or differing from those ordinarily known or anticipated to exist, or could not have been reasonably discovered within the time permitted, or generally recognized as inherent in the area, then notice by the Design Builder must be immediately given to the County Representative, before conditions are disturbed, and in no event later than five (5) Business Days after the first observance of the conditions. Should any existing utilities or services be disturbed, disconnected or damaged during construction, the Design Builder is responsible, at no additional cost of time to the County, for all expense and consequential damages of every type arising from such disturbance or the replacement or repair thereof and must repair such items as required to maintain continuing service, including emergency repairs. (For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, then an increase in the Contract Price or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated in the Contract Documents, in the information supplied to the Design Builder pursuant to Document 00 31 30 (Geotechnical Data and Existing Conditions), in information on file at USA, or otherwise reasonably available to the Design Builder.)

8.5.7 Underground Facilities are inherent in construction involving digging of trenches or other excavations and the Design Builder is to apply its skill and industry to

verify the information available. Underground Facilities are often in different locations and elevations that existing information indicates, and such differences shall constitute a differing site condition only if such difference is clearly material and is not discoverable through reasonable investigation.

9. WARRANTY AND GUARANTEE; INSPECTION AND MAINTENANCE OF WORK.

9.1 Warranty and Guarantee.

9.1.1 General Representations and Warranties: The Design Builder represents and warrants that it, and its Subcontractors 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 Documents. The Design Builder 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 Documents. Design Builder warrants to the County that all Work will be performed in accordance with the professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for projects of the type, scope, quality and complexity of the Project utilizing the design/build contracting mode. Design Builder warrants to the County that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all Work will be free of liens, claims and security interests of third parties; that the Work will be of the highest quality and free from defects and that all Work will conform with the requirements of the Contract Documents. If required by the County, the Design Builder shall furnish satisfactory evidence of compliance with this warranty. Design Builder warrants that the Work shall be fit for its intended purpose, watertight and meeting current standards for work similar to the Project, 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 Documents including the standard of care specified herein. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Design Builder shall furnish and provide the architectural and engineering services necessary to design the Project in accordance with the County's requirements, as outlined in County's Bridging Manual, and other relevant data defining the Project. The architectural and engineering services shall be performed in accordance with the standard of professional skill and care required for a project of similar size, location, scope, and complexity. Design Builder represents that Design Builder, and its consultants and subcontractors are, and shall be during the Project, duly qualified, licensed, registered, and authorized by law to perform design services for the Project. Design Builder shall cause the Work to 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 Documents including the standard of care specified herein.

- 9.1.2 Extended Guarantees: If any guaranty exceeding two (2) years is provided by the supplier or manufacturer of any equipment used in this Project, then the Design Builder shall use best efforts to assist the County in pursuing such extended guarantees for such materials. The Design Builder shall supply and assign to the County all warranty and guarantee documents relative to equipment and materials incorporated in the job and guaranteed by its suppliers or manufacturers; see, however, Document 00 61 10 (Construction Performance Bond) regarding the Surety's limit of its bond for its extended guarantees.
- 9.1.3 Environmental and Toxics Warranty: The covenants, warranties and representations contained in this paragraph 9.1 (Warranty and Guarantee) are effective continuously during Design Builder's Work on the Project and following cessation of labor for any reason including, but not limited to, Project completion. Design Builder covenants, warrants and represents to County that:
- 9.1.3.1 No litigation is pending or, to the Design Builder's knowledge, proposed, threatened or anticipated with respect to any other matter affecting the Project or the operation thereof.
- 9.1.3.2 To the Design Builder's knowledge after due inquiry, no lead or asbestos-containing materials were specified, installed or were discovered in the Project at any time during the Design Builder's construction thereof. If any such materials were discovered, Design Builder made immediate written disclosure to the County. Design Builder shall provide letter to County attesting to this requirement.
- 9.1.3.3 To the Design Builder's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCBs are or were located on the Project at any time during the Design Builder's construction thereof. If any such materials were discovered, the Design Builder made immediate written disclosure to the County.
- 9.1.3.4 To the Design Builder's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during the Design Builder's construction thereof except as required to be installed by the Contract Documents. If any such materials were discovered, the Design Builder made immediate written disclosure to the County.
- 9.1.3.5 The Design Builder'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 the Design Builder 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 the Design Builder has not complied. If there were or are any such notices, Design Builder has provided or shall provide the County with copies thereof.

9.2 Inspection of Work.

9.2.1 All materials, equipment and workmanship used in the Work shall be subject to inspection, testing or evaluation at all times during construction and/or manufacture in accordance with the terms of the Contract Documents. Work and materials, and manufacture and preparation of materials, from beginning of construction until completion and acceptance of the Work, shall be subject to inspection and rejection by the County, its agents, or independent contractors retained by the County to perform inspection services, or governmental agencies with jurisdictional interests.

The Design Builder shall provide them proper and safe conditions for such access and advise them of the Design Builder's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where Specified, the 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.

9.2.2 The Design Builder shall give the County forty-eight (48) hours' notice 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.

9.2.3 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, the Design Builder shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish the County with the required certificates of inspection, or approval. The County retains the right to inspect, test and evaluate the Work without relieving the Design Builder of its obligations under this Agreement. The County will pay the cost of initial inspection and testing, and Design Builder shall pay all costs in connection with any follow-up or additional inspections or testing. The Design Builder 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 the Design Builder's purchase thereof for incorporation in the Work

9.2.3.1 County reserves the right, in its sole discretion, also to conduct air monitoring, earth monitoring, Work monitoring, and any other tests to monitor Contract requirements of safe and statutorily compliant work methods with respect to hazardous waste or materials and, where applicable, safe re-entry level air standards under state and federal law upon completion of the Work, and compliance of the Work with periodic and final inspection by public and quasi-public entities having jurisdiction.

9.2.3.2 Design Builder acknowledges that County has the right to perform, or cause to be performed, various activities and tests including, but not limited to, pre-abatement, during abatement, and post-abatement air monitoring, that County shall have no obligation to perform said activities and tests, and that a portion of said activities and tests may take place prior to the completion of the Work by Design Builder. In the event County elects to perform such activities and tests, Design

Builder shall afford County access to the Site and all areas of the Work as may be necessary for the performance of such activities and tests.

- 9.2.3.3 Notwithstanding County's rights reserved and acknowledged by this paragraph 9.2.3, Design Builder may retain its own industrial hygiene consultant at Design Builder's own expense and may collect samples and may perform tests including, but not limited to, pre-abatement, during abatement, and post-abatement personal air monitoring, and County reserves the right to request documentation of all such activities and tests performed by Design Builder relating to the Work and Design Builder shall immediately provide that documentation upon request.
- 9.2.4 If any Work (or the work of others) that is required to be inspected, tested or approved is covered by the Design Builder 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 Design Builder's expense unless the Design Builder has given the County timely notice of Design Builder's intention to cover the same and the County has given its written approval of the covering of the Work prior to such inspection, testing or approval. If a portion of the Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which County's Representative has not specifically requested to observe prior to its being covered, the County may request to see such Construction Work and it shall be uncovered and recovered by Design Builder. If such Work is in accordance with the Contract Documents, the costs of uncovering and recovering the Work shall be added to the Contract Sum by Change Order; and if the uncovering and recovering of the Work delays the critical path of the Work on the Project, an appropriate adjustment of the Contract Time shall be made by Change Order. If such uncovered Work is not in accordance with the Contract Documents, the Design Builder shall pay such costs and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.
- 9.2.5 In any case where the Work is covered contrary to the written request of the County, it must, if requested by the County, be uncovered for the County's observation or inspection at the Design Builder's expense.
- 9.2.6 Whenever required by the County, the Design Builder shall furnish tools, labor and materials necessary to make examination of Work that may be completed or in progress, including of uncovering or taking down portions of finished Work.
- 9.2.7 Inspection of the Work by or on behalf of the County, or the 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. The Design Builder shall have an absolute duty, in the absence of a written Change Order signed by the County, to perform the Work in conformance with the Contract Documents and correct defective work promptly upon knowledge thereof.
- 9.2.8 Any inspection, evaluation, or test performed by or on behalf of the County relating to the Work is solely for the benefit of the County and shall not be relied upon by the Design Builder. The Design Builder shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by the County, whether or not such inspections, evaluations, or tests are permitted or required under the Contract

Documents. The Design Builder shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.

9.3 Correction of Defective Work.

- 9.3.1 If the Design Builder 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 Documents, the County may order the Design Builder to replace any Defective Work or stop any portion of Work to permit the County (at the Design Builder's expense) to replace such Defective Work. The County is not obligated to exercise these rights for the benefit of the Design Builder or any other party.
- 9.3.2 If required by the County, the Design Builder shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the County, remove it from the Site and replace it with Work that is not defective. The Design Builder shall pay all reasonable 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). Any extraordinary costs incurred in the examination, evaluation and determination that such Defective Work should be corrected or removed and replaced will be the responsibility of the Design Builder. The Design Builder shall pay 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 or to become due the Design Builder 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 Design Builder disagrees with the County's calculation, it may make a claim as provided in Article 12 (Claims by Design Builder) below. The County's rights under this paragraph 9.3 (Correction of Defective Work) shall be in addition to any other rights it may have under the Contract Documents or by law.
- 9.3.3 **Correction Period:** If within **two (2) years after the date of Substantial Completion** 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 Documents or supplied with regard to the Work or required by any specific provision of the Contract Documents, any Work is found to be defective, the Design Builder 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 there from. If the Design Builder 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 there from (including but not limited to all costs of repair or replacement of work of others) shall be paid by Design Builder. Where Design Builder fails to correct Defective Work, or defects are discovered outside the correction period, County

shall have all the rights and remedies granted by the Contract Documents or by law.

- 9.3.4 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 Completion of all the Work, the correction period for that part of the Work or that item shall start to run from the date such work is occupied, or the date such item is placed in continuous service. Additionally, for equipment and systems having extended guarantees or warranties beyond the two (2) year obligation described in this paragraph 9.3 (Correction of Defective Work), the correction period shall commence on the later of (a) the County's actual use of the item for the purpose intended (i.e., not merely for testing, commissioning, etc.), and (b) when the County's commissioning agent indicates in writing to the County that the item is ready to be used for the purpose intended.
- 9.3.5 Where defective or rejected Work (and damage to other work resulting there from) has been corrected, removed or replaced under this provision, and the commencement of the original correction, removal or replacement began during the first year of the original correction period, the revised correction period hereunder with respect to such Work will be for an additional period of two (2) years after such correction or removal and replacement has been satisfactorily completed. Where defective or rejected Work (and damage to other work resulting there from) has been corrected, removed or replaced under this provision, and the commencement of the correction, removal or replacement began during the second year of any correction period, the revised correction period hereunder with respect to such Work will be for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.
- 9.3.6 In the event of an emergency constituting an immediate hazard to health or safety of County employees, or other persons, property, or licensees, the County may undertake, at the Design Builder's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by Work of the Design Builder not being in accordance with the requirements of the Contract Documents.

9.4 Acceptance and Correction of Defective Work by the County.

- 9.4.1 If after giving the Design Builder 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. The Design Builder 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 Documents 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 or to become due to the Design Builder the amount of such claims, costs, losses (including diminution in value), damages, expenses and liabilities attributable to the acceptance of the defective work. If the Design Builder disagrees with the deduction, the Design Builder may make a Claim as provided in Article 12 (Claims by Design Builder). If the acceptance occurs after Final Payment, an appropriate amount shall be paid by the Design Builder as determined by the County.

- 9.4.2 The County may correct Defective Work: If the Design Builder 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 the County in accordance with paragraph 9.3 (Correction of Defective Work) above or to provide a plan for correction of defective Work acceptable to the County, or if the Design Builder otherwise fails to perform the Work in accordance with Contract Documents, the County may, after five (5) Days written notice to Design Builder, correct and remedy any deficiency. In connection with such corrective and remedial action, the County may exclude the Design Builder from all or part of the Site, take possession of all or part of the Work, and suspend Design Builder's work related thereto, take possession of all or part of the Design Builder's materials, 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 the Design Builder but which are stored elsewhere. Design Builder shall allow the County, its representatives, agents, employees, consultants and other contractors access to the Site and materials to enable the County to exercise the rights and remedies under this paragraph 9.4 (Acceptance and Correction of Defective Work by the County). 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 Design Builder and a change order will be issued incorporating the necessary revisions in the Contract Documents 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 or to become due to the Design Builder 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 the Design Builder's Defective Work. If the Design Builder disagrees with the County's calculation, it may make a Claim as provided in Article 12 (Claims by Design Builder) of this Document 00 72 00.
- 9.4.3 If the Design Builder fails to pay the costs of such removal and storage as required by this paragraph 9.4 (Acceptance and Correction of Defective Work by the County) within ten (10) Days after written demand, the County may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. The Design Builder shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which the Design Builder is liable to the County, including compensation for County Representative's services and expenses. If such proceeds of sale do not cover costs and damages for which the Design Builder is liable to County, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due the Design Builder or the remaining payments are insufficient to cover such deficiency, the Design Builder shall promptly pay the difference to the County.
- 9.4.4 The Design Builder's obligations under this Document are in addition to and not in limitation of its warranty under paragraph 9.1 (Warranty and Guarantee) of this Document 00 72 00 or any other obligation of the Design Builder under the Contract Documents or law. Enforcement of the Design Builder's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies the County may have under the Contract Documents or at law for Defective Work.

Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to other obligations of the Design Builder under the Contract Documents and in no way limits either the Design Builder's liability for Defective Work or the time within which proceedings may be commenced to enforce the Design Builder's obligations under the Contract Documents or law.

9.5 Rights Upon Inspection or Correction.

9.5.1 The Design Builder 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 reasonable exercise by the County of its rights and remedies under this Article 9 (Warranty, Guaranty, and Inspection of Work) of this Document 00 72 00. Where the County reasonably exercises its rights under Article 9 of this Document, it retains all other rights it has by law or under the Contract Documents, including but not limited to, the right to terminate the Design Builder's right to proceed with the Work for cause under the Contract Documents and/or make a claim or back charge where a Change Order cannot be agreed upon.

9.5.2 Inspection shall not relieve the Design Builder of its obligation to have furnished material and workmanship in accordance with Contract Documents. 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 Documents and shall in no way be deemed as acceptance of the Work paid therefore. The Design Builder's obligation to complete the Work in accordance with the Contract Documents shall be absolute, unless the County agrees otherwise in writing.

9.6 Samples and Tests of Materials and Work.

9.6.1 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 the Design Builder and furnished to the County in such quantities and sizes as may be required for proper examination, analysis and tests.

9.6.2 All samples shall be submitted in ample time to enable the County to make any tests, analyses or examinations necessary before the time at which it is desired to incorporate the material into the Work.

9.6.3 The 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.

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

9.8 Acceptance. Neither inspection by the County or its authorized agents or representatives, nor any order 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 Agreement or that any part of the Work complies with the

requirements of the Contract Documents, 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 Agreement be held to be a waiver of any other subsequent breach, nor shall County be thereby estopped from bringing any action for damages or enforcement arising from the failure to comply with any of the terms and conditions hereof.

- 9.9 Maintenance of Work. Up to the time of Completion, as defined in Document 01 42 00 (References and Definitions), the Design Builder shall maintain all Materials and Equipment in accordance with manufacturer's requirements, including but not limited to, while such Materials and Equipment are in transit or otherwise are in the care and custody of the Design Builder.

10. **DESIGN BUILDER'S ORGANIZATION AND EQUIPMENT.**

- 10.1 Design Builder's Legal Address. The mailing and e-mail address given in Design Builder's Proposal hereby designated as the legal address and telecopy number of the Design Builder, but such address and/or number may be changed at any time by notice in writing, delivered to the County, which in conspicuous language advises the County of a change in legal address or telecopy number. Delivery to the Design Builder's legal address or depositing in any post office or post office box regularly maintained by United States Postal Service, in a postpaid wrapper, directed to the Design Builder at the legal address, of any plan, notice, letter or electronic communication agreed to in advance by County and Design Builder, shall be deemed legal and sufficient service thereof upon the Design Builder. Telecopy to the Design Builder's designated telecopy number of any letter, memorandum, or other communication on standard or legal sized paper, with proof of telecopy transmission, shall also be deemed legal and sufficient service thereof upon the Design Builder.
- 10.2 Design Builder's Office at the Site. The Design Builder is required to maintain an office at the Site, which office shall be headquarters of representative authorized to transmit and receive instructions, drawings or other communications to and from the County. Instructions, drawings, or other communications given to the Design Builder's representative or delivered at the Site office in representative's absence shall be deemed to have been given to the Design Builder.
- 10.3 Design Builder's Superintendents or Forepersons. The Design Builder 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 the Design Builder shall be liable for faithful observance of instructions delivered to the Design Builder or to its authorized representative or representatives on Site, unless otherwise agreed to in advance by County and Design Builder.
- 10.4 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.
- 10.5 Design Builder's and Subcontractors' Employees. The Design Builder shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do the Work. If the County notifies the Design Builder 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 Documents, or uses threatening or abusive language to any

person on the Work (including persons representing County), or violates sanitary rules, or is otherwise unsatisfactory in the reasonable opinion of the County, and if the County requests that such person be discharged from the Work, then the Design Builder or its Subcontractor shall immediately discharge such person from the Work and the discharged person shall not be re-employed on the Work except with written consent of the County.

- 10.5.1 Skilled and Trained Workforce Requirement. Unless exempt by law, Design Builder commits that Design Builder and its subcontractors at every tier will use a skilled and trained workforce for work on the Project that falls within an apprenticeable occupation in the building and construction trades in accordance with California law.
- 10.5.2 "Skilled and trained workforce" shall be given the meaning defined in Public Contract Code section 2601 (PCC § 2601), which may be amended from time to time. Design Builder agrees that 60 percent of skilled journeypersons employed to perform work on the Project by Design Builder or its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation per PCC § 2601.
- 10.5.3 The apprenticeship graduation requirements are satisfied for a particular calendar month if either of the following is true:
- (1) At least the required percentage of the skilled journeypersons employed by the Design Builder or subcontractor to perform work on the Project meet the graduation percentage requirement; or
 - (2) For the hours of work performed by skilled journeypersons employed by the Design Builder or subcontractor on the Project, the percentage of hours performed by skilled journeypersons who met the graduation requirement is at least equal to the required graduation percentage.
- 10.5.4 The Design Builder or subcontractor need not meet the apprenticeship graduation requirements of PCC § 2601, if during the calendar month, the Design Builder or subcontractor employs skilled journeypersons to perform fewer than 10 hours of work on the Project.
- 10.5.5 The subcontractor need not meet the apprenticeship graduation requirements of PCC § 2601 if both of the following are met:
- (1) The subcontractor was not a listed subcontractor under PCC § 4104, or a substitute listed subcontractor; and
 - (2) The subcontract does not exceed one-half of 1 percent of the original price of the prime contract.
- 10.5.6 Design Builder's commitment that a skilled and trained workforce will be used to perform the Project shall be established by providing a monthly report demonstrating that the Design Builder and its subcontractors at every tier are complying with the requirements of PCC § 2601 while the Project is being performed. A monthly report shall be provided thirty (30) Days after the end of the month for which work is being reported or as otherwise agreed between Design Builder and County. If Design Builder fails to provide a monthly report, Owner shall withhold payment for the portion of the monthly pay application related to the non-

compliance of the Design Builder or portion of the monthly pay application related to the non-compliance of any subcontractor.

10.5.7 Upon notice to the Design Builder of withholding for non-compliance, the non-compliant Design Builder and/or subcontractor may cure the non-compliance. If Design Builder and/or any subcontractor cures the non-compliance or substantially complies with required percentages of PCC § 2601, any monies withheld by the County will be released no later than the next pay application. If Design Builder and/or any subcontractor fails to cure the non-compliance or substantially comply with the requirements within 60 Days of notice of the non-compliance, the Design Builder and/or non-compliant subcontractor shall meet and confer with the County to demonstrate the Design Builder's and/or subcontractor's efforts and plan to achieve substantial compliance with the requirements, on a cumulative basis, by completion of the Project. A meet and confer may be held earlier upon Design Builder's written request to the County. The County, after reasonable demonstration by the Design Builder and/or subcontractor that good faith and best efforts have been and are being made to substantially comply with the requirements of PCC § 2601, shall release any monies withheld.

10.5.8 The PCC § 2601 percentages shall not apply to punchlist or warranty for a Design Builder and/or subcontractor if that Design Builder and/or subcontractor has otherwise substantially complied with the requirements of PCC § 2601 during the Project.

10.5.9 If Design Builder and/or subcontractor is unable to substantially comply with the required percentages, on a cumulative basis, by completion of the Project, the County, in its discretion may assess a charge to the non-compliant party of \$1,000.00 per percentage that the Design Builder and/or subcontractor fails to meet the graduation percentage requirements, not to exceed \$5,000.00 or 10 percent of the total contract or subcontract value, whichever is less. This shall be the sole and exclusive remedy for Design Builder's and/or any subcontractor's non-compliance with this section.

10.6 Design Builder to Supply Sufficient Workers and Materials.

10.6.1 Unless otherwise required by the County pursuant to the terms of the Contract Documents, the Design Builder 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.

10.6.2 At any time during progress of the Work should the Design Builder directly or indirectly (through Subcontractors or subconsultants) refuse, neglect, or be unable to supply sufficient materials or employ qualified workers to prosecute the Work as required, then the County may require the Design Builder to accelerate the Work and/or furnish additional qualified workers or materials as the County may consider necessary, at no cost to County. If the Design Builder does not comply with the notice within five (5) Business Days of date of service thereof, the County shall have the right (but not a duty) to provide materials and qualified workers to finish the Work or any affected portion of the Work, as the County may elect. The County may, at its discretion, exclude the Design Builder from the Site, or portions of the Site or separate work elements during the time

period that the County exercises this right. The County shall deduct from moneys due or become due under the Contract Documents, the sums necessary to meet expenses thereby incurred and paid to persons supplying materials and doing the Work. The County shall deduct from funds or appropriations set aside for purposes of Contract Documents the amount of such payments and charge them to the Design Builder as if paid to the Design Builder. Design Builder shall remain liable for resulting delay, including liquidated damages and indemnification of the County from claims of others.

- 10.6.3 Exercise by the County of the rights conferred upon it in this paragraph 10.6 (Design Builder to Supply Sufficient Workers and Materials) is entirely discretionary on the part of the County. The County shall have no duty or obligation to exercise the rights referred to in this paragraph 10.6, 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 this paragraph 10.6 are cumulative to the County's other rights under the Contract Documents and law including, but not limited to, the County's right to terminate the Contract.
- 10.6.4 The County may, if it deems necessary for reasons other than as described in this paragraph 10.6 (Design Builder to Supply Sufficient Workers and Materials) of this Document 00 72 00, direct the Design Builder 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, the Design Builder shall work said overtime and/or shift work, and the County shall pay the Design Builder solely for the additional premium wages paid, plus taxes imposed by law on such additional wages. 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.)
- 10.7 Design Builder to List Trades Working. The Design Builder shall list the trades working on the Site and their scheduled activities on a daily basis and provide a copy of that list to the County on a daily basis.
- 10.8 Design Builder's Use of the Site.
 - 10.8.1 The Design Builder 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.

The Design Builder 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. Personnel of the Design Builder and Subcontractors shall not occupy, live upon, or otherwise make use of the Project site during any time that Work is not being performed at the Site, except as otherwise provided in the Contract Documents.
 - 10.8.2 The Design Builder shall, during performance of the Work, keep the Site and surrounding area free from the accumulation of excess dirt, waste materials, and

rubbish caused by the Design Builder. The Design Builder shall remove all excess dirt, waste material, and rubbish caused by the Design Builder; tools; equipment; machinery; and surplus materials from the Site and surrounding area at the completion of the Work.

11. PROSECUTION AND PROGRESS OF THE WORK.

11.1 Schedules and Examinations of Contract Documents.

11.1.1 Before undertaking each part of the Work, the Design Builder shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon, all applicable field and engineering measurements and all actual conditions. The Design Builder shall promptly report in writing to the County any conflict, error, ambiguity or discrepancy which the Design Builder may discover and shall obtain a written interpretation or clarification from the County before proceeding with any the Work affected thereby.

11.1.2 The Design Builder shall submit an electronic version of an original, plus Hardcopies of the following schedules to the County:

11.1.2.1 Schedules and Reports as required by Documents 01 32 16 (Schedules and Reports) and 01 30 00 (Submittal Procedures).

11.1.2.2 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 Document 01 29 00 (Payment Procedures).

11.1.3 Unless otherwise provided in the Contract Documents, at least fifteen (15) Days before submission of the first application for payment, a conference attended by the Design Builder, the County, and others as appropriate, will be held to review for acceptability the schedules submitted in accordance with paragraph 11.1.2 above and first reviewed at the Design Conference. Schedules shall be updated and completed as required by Documents 01 29 00 (Payment Procedures), 01 32 16 (Schedules and Reports) and 01 30 00 (Submittal Procedures). No progress payment shall be due or owing to the Design Builder until the schedules are submitted to and reasonably acceptable to the County and/or the County consultants as meeting the requirements of the Contract Documents, including Documents 01 29 00 (Payment Procedures), 01 32 16 (Schedules and Reports) and 01 30 00 (Submittal Procedures).

The County's acceptance of the Design Builder's schedules will not create any duty of care or impose on the County any responsibility for the sequencing, scheduling or progress of Work nor will it interfere with or relieve the Design Builder from the Design Builder's full responsibility, therefore.

11.1.4 Before commencing any portion of the Work, the Design Builder 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 Design Builder 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 time at which the Design Builder proposes to begin Work, so that the County may make necessary preliminary work without inconvenience or delay to the Design Builder. If the County so requires, the Design Builder shall submit weekly, a rolling six (6) week schedule, listing the activities anticipated to be performed along with the dates for which work is expected to be performed.

- 11.1.5 The Design Builder shall submit submittals and shop drawings to the County for review in accordance with Document 01 30 00 (Submittal Procedures). Submission of a Shop Drawing shall constitute the Design Builder's representation that all requirements of Document 01 30 00 (Submittal Procedures) have been complied with. All Submittals will be identified as the County may require and in the number of copies specified in this Document 00 72 00 or Document 01 30 00 (Submittal Procedures).
- 11.1.6 The Design Builder shall not perform any Work requiring submission of a Shop Drawing or Sample or other submittal prior to submission and a favorable review thereof by the Architect, associated Engineer or design professional, and the County. Where a Shop Drawing or Sample or other Submittal is required by the Contract Documents or the final schedule of Shop Drawing and Sample submissions accepted by the County, any related Work performed prior to the County's approval of the pertinent Submittal will be at the sole expense, responsibility and risk of the Design Builder.
- 11.1.7 The Design Builder shall utilize the Project Master Schedule in planning, scheduling, coordinating, performing and controlling the Work (including all activities of Subcontractors, assigned the Design Builders, equipment vendors and suppliers). The Design Builder shall update the Project Master Schedule on a monthly basis for purpose of recording and monitoring the progress of the Work and evaluating and preparing the Design Builder's monthly progress payments.
- 11.1.8 The Design Builder's failure to submit and maintain an acceptable Project Master Schedule may, in the County's discretion, and without limiting the materiality of the Design Builder's other obligations under the Contract Documents, constitute grounds to declare the Design Builder in material breach of the Contract Documents.

11.2 Lines and Grades, Measurements.

- 11.2.1 The Work shall be done to lines and grades established by the Design Builder at the Design Builder's cost in accordance with the Contract Documents, unless the County, in its discretion, directs in writing otherwise.
- 11.2.2 At times it may be necessary to discontinue portions of the Design Builder'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, on request of the County, the Design Builder shall discontinue the Work to such extent as may be necessary for purposes of the County.
- 11.2.3 No direct payment will be made for cost to the Design Builder 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.

11.3 Cost Data.

- 11.3.1 The Design Builder 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 Design Builder of each class of materials, tools and appliances used by Design Builder in the Work, and amount of each class of materials used in each subdivision of the Work. If Design Builder 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 requested by or on behalf of the County.
- 11.3.2 The Design Builder 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. The Design Builder shall provide the County with copies for each Day the Design Builder works on the Project, to be delivered to County either the same Day or the following morning before starting work at the Site. Design Builder shall take weekly progress photographs of all areas of the Work. The Design Builder shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors. The Design Builder shall report to the Surety promptly upon receiving requests from the Surety to provide reporting. Design Builder shall provide copies of daily job reports as required by the County or specified in Document 01 32 16 (Schedules and Reports).
- 11.3.3 The County shall have the right to audit and copy the Design Builder'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 the Design Builder'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, the County shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Proposal documents (subject to Document 00 61 30 (Escrow Bid 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 the Design Builder. Notwithstanding the foregoing, during construction, the County shall have the right to audit, inspect and obtain copies of cost records and job cost variance reports only to the extent such matters are applicable to a Design Builder Claim or specifically disputed cost item raised by the County, or as may otherwise be required by law.
- 11.3.4 The Design Builder shall maintain in a safe place at the Site, or in electronic media format approved in advance by the County and Design Builder, one record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Work Directives, Force Account orders, Construction Change Directives, 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 and Submittals, shall be maintained and available to the County for reference and inspection.

Upon completion of the Work, Design Builder shall deliver to the County, the Project Record Documents, Samples and Shop Drawings, as-built drawings, and

Record Drawings and Specifications. Except for materials and records delivered to County, Design Builder shall maintain and retain, for a period of at least five years after Contractor's receipt of the final payment under this Agreement, all records relating to this Agreement or to the Project, including without limitation estimates, bids, shop drawings, submittals, subcontracts, personnel and payroll records, job reports and diaries, receipts, invoices, cancelled checks and financial records. Upon request by County, at no additional charge, Contractor shall promptly make such records available to County, or to authorized representatives of the state and federal governments, at a convenient location within the County designated by Public Agency, and without restriction or limitation on their use.

- 11.3.5 The County and any other applicable governmental entity shall have the right to inspect all information and documents maintained under this paragraph 11.3 (Cost Data) at any time during the Project and for a period of five (5) years following Completion. During this five (5) year period, Design Builder shall maintain information and documents in either paper or electronic form. This right of inspection shall not relieve the Design Builder of its duties and obligations under the Contract Documents. 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 Documents.

12. CLAIMS BY DESIGN BUILDER.

- 12.1 Performance During Claim Process. The Contractor shall continue to perform its Work under the Contract and shall not cause a delay in the Work during any dispute, claims definition, negotiation, mediation, or arbitration proceeding, except by written agreement by the County. The provisions of this Article 12 shall survive termination, breach or completion of this Agreement, and constitute a claims procedure by agreement under Government Code section 930.2. Design Builder shall bear all costs incurred in the preparation and submission of a Claim.

12.2 Definition of Claim.

- 12.2.1 For purposes of this section, a "Claim" means a separate demand sent by registered or certified mail with return receipt requested by the Contractor for:

12.2.1.1 A time extension,

12.2.1.2 Payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for, or the claimant is not otherwise entitled to, or

12.2.1.3 Payment of money that the County disputes is owing.

12.3 Claim Presentations

- 12.3.1 The attention of the Contractor is drawn to Government Code section 12650, et seq. regarding penalties for false claims.

- 12.3.2 Contractor shall file with the County any written Claim, including the documents necessary to substantiate it, on or before the Day of final payment on the Contract.
- 12.3.3 The Contractor shall not cause a delay in the Work during any dispute, claims definition, negotiation, mediation, or arbitration proceeding, except by written agreement by the County.
- 12.3.4 The Contractor shall bind all its Subcontractors, material persons, and suppliers to the provisions of this section on mediation and arbitration and will hold the County harmless against disputes and claims by Subcontractors, material persons, or suppliers. The claim notice and documentation procedure described in this Article 12 (Claims by Design Builder) applies to all claims and disputes arising under the Contract Documents, including without limitation any claim or dispute by any Subcontractor or material supplier. All Subcontractor and supplier claims of any type shall be brought only through the Design Builder as provided in this Article 12. Under no circumstances shall any Subcontractor, subconsultant or supplier make any direct claim against the County.

12.4 Claim Resolution

- 12.4.1 In the event of a dispute between the parties as to performance of the Work, the interpretation of this Agreement, or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 9204 (PCC § 9204), if applicable. Pending resolution of the dispute, if the dispute is not resolved, Contractor agrees it will neither rescind the Contract nor stop the progress of the Work but will allow determination by a court of the State of California having competent jurisdiction of the dispute, after the Project has been completed, and not before.
- 12.4.2 For all Claims which arise between a Contractor and a local agency, the procedure set forth in PCC § 9204 shall apply:
 - 12.4.2.1 The County shall respond in writing within forty-five (45) Days of receipt of the Claim identifying what portion of the Claim is disputed and what portion is undisputed.
 - 12.4.2.1.1 Upon receipt of a Claim, County, and Contractor may, by mutual agreement, extend the time period for County to respond.
 - 12.4.2.1.2 Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) Days after the County issues its written response to the Claim.
 - 12.4.2.1.3 Contractor shall furnish reasonable documentation to support the Claim.
 - 12.4.2.2 If Contractor disputes County's written response, or if County fails to respond to a Claim issued pursuant to this Article 25 within the time prescribed, Contractor may 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 mail or certified mail,

return receipt requested, County shall schedule a meet and confer conference within thirty (30) Days for settlement of the dispute.

12.4.2.3 Within ten (10) Business Days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the 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 the County issues its written statement.

12.4.2.4 Any disputed portion of the Claim, as identified by the statement referenced in Paragraph 12.4.2.3 shall be submitted to nonbinding mediation, with the County and Contractor sharing the associated costs equally.

12.4.2.4.1 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.

12.4.2.4.2 If County and Contractor cannot agree to 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.

12.4.2.4.3 County and Contractor shall each bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

12.4.2.4.4 If mediation is unsuccessful, the parts of the claim remaining in dispute shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with section 1141.10) of the Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding section 1141.11 of that code. The Civil Discovery Act of 1986, (Article 3 (commencing with section 2016) of Chapter 1 of Title 4 of part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

12.4.2.5 Failure by County to respond to a Claim within the time periods described in this Article 12 or to otherwise meet the time requirements of PCC § 9204 shall result in the Claim being deemed rejected in its entirety.

12.4.2.6 The County shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the Contract Documents. Unpaid claim amounts not paid in a timely manner will accrue interest at seven percent (7%) per annum. In any suit filed pursuant to this section, the County shall pay interest at the legal rate on any arbitration award or judgment. Interest shall begin to accrue on the date the suit is filed in a court of law.

12.4.2.7 If a Subcontractor or lower-tier subcontractor lacks legal standing to assert a Claim against County because privity of contract does not exist, Contractor may present County a Claim on behalf of a Subcontractor or lower-tier Subcontractor. A Subcontractor may request, in writing, either on his or her own behalf or that of a lower-tier Subcontractor, that Contractor present a Claim for work which was performed by Subcontractor, or by a lower-tier Subcontractor on behalf of Subcontractor. Subcontractor requesting that the claim be presented to County must furnish reasonable documentation to support the Claim. Within forty-five (45) days of receipt of this written request, Contractor must notify Subcontractor in writing as to whether Contractor presented the Claim to County, and, if Contractor did not present the Claim, provide Subcontractor with a written statement of the reasons for not having done so.

13. **LEGAL AND MISCELLANEOUS.**

13.1 Laws and Regulations.

13.1.1 The Design Builder 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 the Design Builder 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.

13.1.2 Whenever the Drawings and Specifications require large sizes or higher standards than are required by any applicable statute, law, ordinance, code, rule, regulation or order, the Drawings and Specifications shall govern. Whenever the Drawings and Specifications require something, which will violate such statutes, laws, ordinances, codes, rules, regulations or orders, then such statutes, laws, ordinances, codes, rules, regulations or orders shall govern.

13.1.3 The Design Builder shall perform the Work in accordance with all laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over the County, the Design Builder, any Subcontractor, the Project, the Site, the Work, or the prosecution of the Work.

13.1.4 The Design Builder shall perform the Work in accordance with all requirements of any insurance company issuing insurance required hereunder.

13.1.5 The Design Builder shall perform the Work in accordance applicable sections in the Labor Code.

13.1.6 The Design Builder shall give notices required by all laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities, including all environmental laws and all notice requirements under the State of California Safe Drinking Water and Enforcement Act of 1986 (Health & Safety Code §§ 25249.5 et seq.). The Design Builder shall promptly

notify County's Representative in writing if the Design Builder becomes aware during the performance of the Work that the Contract Documents are at variance with Applicable Code Requirements.

- 13.1.7 If the Design Builder performs Work which it knows or should know is contrary to any laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders, without prior notice to the County and the County's Representative, Design Builder shall be responsible for such Work and any resulting damages including, without limitation, the costs of correcting Defective Work.

13.2 Permits and Taxes.

- 13.2.1 The Design Builder shall: (a) identify and procure all permits and licenses applicable to the Work (including Regulatory Agency permits and, to the extent applicable, those for environmental matters), (b) comply with, implement and acknowledge effectiveness of all permits, (c) initiate and cooperate in securing all required notifications or approvals therefore, and (d) give all notices necessary and incident to due and lawful prosecution of the Work, unless otherwise provided herein. The County will pay all permit fees as indicated in Document 00 52 00 (Agreement) required in securing such permits and licenses. For all such permits and licenses, the Design Builder shall prepare all forms and documentation necessary for any required submittal. The Design Builder shall calculate and confirm the fees due to Regulatory Agency and inform the County of the amount due to any entity for such permits and licenses no later than thirty (30) Days prior to when a check is required. The Design Builder 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, including all increases in sales and/or use taxes and all other such taxes effective as of the date of Design Builder's Response to the relevant Request For Supplemental Information, as amended. The Design Builder 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.

- 13.2.2 Except as is provided in paragraph 13.7 of Document 00 72 00 (General Conditions), the Design Builder 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 the 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.

Design Builder 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. The Design Builder represents that it will collect, report, and pay all sales or use taxes to the State Board of Equalization. Upon full payment, the Design Builder will issue the County a receipt pursuant to Revenue & Taxation Code § 6203, relieving the County of all liability for any tax relating to the Work or any item of the Work.

13.3 Responsibility of Design Builder and Indemnification.

- 13.3.1 None of the State Agencies, the County, its Board of Supervisors, County's Representative, their officers, directors, representatives, agents, consultants, or employees associated with the Work shall be liable or accountable in any manner for:
- 13.3.1.1 loss or damage of any type that may happen to any part of the Work or any part thereof;
 - 13.3.1.2 loss or damage of any type to materials or other things used or employed in performing the Work;
 - 13.3.1.3 injury, sickness, disease, or death of any person, including, but not limited to, workers and the public;
 - 13.3.1.4 damage of any type to property, and the Design Builder releases all of the foregoing persons and entities from any and all such claims;
 - 13.3.1.5 or any claims or liabilities imposed or existing by virtue of the removal, abatement, and disposal of hazardous materials and waste including, but is not limited to, liabilities connected to the selection and use of a waste disposal facility, personal injury, property damage, loss of use of property, damage to the environment or natural resources, or "disposal" and "release" of materials associated with the Work (as defined in 42 U.S.C. § 9601 et seq.).
- 13.3.2 To the furthest extent permitted by law (including without limitation Civil Code sections 2782 and 2782.8), the Design Builder shall assume the defense of, and indemnify, and hold harmless the County of Alameda, and all of its officers, directors, representatives, attorneys, agents, employees and consultants, including but not limited to the County Board of Supervisors and all County Representatives from third party (not including the County and the Design Builder) 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 to the extent caused by any breach of contract, negligent act, error or omission of the Design Builder, Subcontractors (of any tier), subconsultants, designers, suppliers, any one directly employed by any of them or any one for whose acts any of them may be liable, regardless of whether it is caused by the concurrent negligent act or omission, of an indemnified party, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on the indemnified party. Provided, however, that Design Builder's indemnification obligations shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a claim against an indemnity was caused solely by the negligence or willful misconduct of that indemnity. In that event, however, Design Builder's indemnification obligations shall remain with respect to all other indemnities.
- 13.3.3 Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Design Builder, its Subcontractors of any tier, its designers or suppliers, or the officers, directors, representatives, employees, or agents of any of them.

- 13.3.4 To the furthest extent permitted by law (including, without limitation, Civil Code section 2782 and 2782.8), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of contract, negligence, fault or strict liability of the parties indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work and the terms of the Contract Documents. If the Design Builder fails to perform any of its defense or indemnity obligations, the County may in its discretion back charge the Design Builder for the County's costs and damages resulting there from and withhold such sums from progress payments or other contract moneys which may become due.
- 13.3.5 Except to the extent, if any, prohibited by Civil Code section 2782 or 2782.8, Design Builder's obligations under this section exist regardless of the existence or degree of fault of County or any indemnitee and shall be as broad and comprehensive as allowed by law.
- 13.3.6 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, and each of the County's Representatives, the State Agencies, shall not owe any duty of care to Design Builder, its Subcontractors, subconsultants or suppliers, except as set forth in this Agreement.
- 13.3.8 With respect to third-party claims against Design Builder, Design Builder 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, and all other County Representatives.
- 13.3.9 The Design Builder is 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.
- 13.3.10 Design Builder and Design Builder's insurance carriers shall respond within fifteen (15) Days to the tender of any claim for defense and indemnity by County, unless this time has been extended by County.
- 13.4 Notice of Concealed or Unknown Conditions. If either of the following conditions is encountered at the Site when digging trenches or other excavations, the Design Builder shall give a written Notice of Differing Site Conditions to the County promptly before conditions are disturbed (except in an emergency as required by paragraph 16.4 (Emergencies) of this Document 00 72 00), 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 Documents or information provided by the County; (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 Documents. In response to the Design Builder's written Notice of Differing Site Conditions under this paragraph 13.4 (Notice of Concealed or Unknown Conditions), the County will investigate the identified conditions, and if they differ materially and cause increase or decrease in the Design Builder'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 Documents, including without limitation Document 01 26 00 (Contract Modification Procedures).

13.4.3 If the County determines that physical conditions at the Site are not latent or are not materially different from those indicated in the Contract Documents or information provided by the County; or that no change in terms of the Contract Documents is justified, the County shall so notify the Design Builder in writing, stating reasons. If the County and the Design Builder do not agree on an adjustment in Contract Sum or Contract Time, the Design Builder shall proceed with the Work as directed by the County and may file a Claim as provided in Article 12 (Claims by Design Builder) of this Document 00 72 00.

13.4.4 The Design Builder is not 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) the Design Builder knew of the existence of such conditions at the time Design Builder submitted its Bid; or (b) the Design Builder should have known of the existence of such conditions as a result of having complied with the requirements of the Contract Documents, including without limitation Article 1 (Investigations and Subcontractors) and paragraph 8.4 (Existing Utilities) of this Document 00 72 00; or (c) the information or conditions claimed by the Design Builder to be Latent or materially different consist of information, conclusions, opinions or deductions of the kind the Contract Documents, including without limitation Article 1 of this Document 00 72 00 preclude reliance upon; or (d) the Design Builder was required to give written Notice of Differing Site Conditions under the Contract and failed to do so within the time required; or (e) the Design Builder could have reasonably inferred the existence of such conditions based on its experience and expertise on similar projects in urban areas.

13.4.5 If the County and the Design Builder 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 paragraph 13.4 (Notice of Concealed or Unknown Conditions), the Design Builder shall proceed with the Work as directed by the County and may make a claim as provided in Article 12 (Claims by Design Builder) of this Document 00 72 00.

13.5 Notice of Hazardous Waste or Materials Conditions.

13.5.1 Written Notice of Hazardous Materials Condition by the Design Builder shall be given to the County promptly, before any of the following conditions are disturbed (except in an emergency as required by paragraph 16.4 (Emergencies) below), and in no event later than twenty-four (24) hours after first observance, of any (a) material that the Design Builder believes may be material that is hazardous waste or hazardous material, as defined in § 25117 of the Health & 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").

13.5.2 Except as otherwise provided in the Contract Documents or as provided by applicable law, the Design Builder 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 the Work under the Contract Documents (such as hazardous waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of Work under the Contract Documents), where the Design Builder complies with all requirements in the Contract Documents and applicable law respecting such Hazardous Materials.

- 13.5.3 The Design Builder's written Notice of Hazardous Materials Conditions under this paragraph 13.5 (Notice of Hazardous Waste or Materials Conditions) shall indicate whether the Hazardous Materials or other materials were shown or indicated in the Contract Documents to be within the Scope of Work, and whether the Hazardous Materials or other materials were brought to the Site by the Design Builder, its Subcontractors, subconsultants, suppliers, or anyone else for whom the Design Builder is responsible.
- 13.5.4 The Design Builder shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed Hazardous Materials if (a) the Design Builder knew of the existence of such Hazardous Materials or other materials at the time Design Builder submitted its proposal; or (b) the Design Builder failed to give the written Notice of Hazardous Materials Conditions within the time required these General Conditions. Notwithstanding (a) and (b) above, the Design Builder may (subject to paragraphs 13.5.2 and 13.5.3 above) be entitled to adjustment in the Contract Sum or Contract Time regarding claimed Hazardous Materials if such Hazardous Material is not indicated on the reports and information provided by the County, other information reasonably available to the Design Builder, visual observation or reasonable investigation. If the County determines that conditions do involve Hazardous Materials or that change in Contract Document 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 Documents, including without limitation Document 01 26 00 (Contract Modification Procedures).
- 13.5.5 If the County determines that conditions do not involve Hazardous Materials that no change in Contract Document terms is justified, the County shall notify the Design Builder in writing, stating the reasons for its determination. If the County and the Design Builder cannot agree on any claimed adjustment in Contract Sum or Contract Time, the Design Builder shall proceed with the Work and as directed by the County and may file a claim as provided in Article 12 (Claims by Design Builder) of this Document 00 72 00.
- 13.5.6 In addition to the parties' other rights, if the Design Builder 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 the Design Builder's right to proceed under the Contract Documents pursuant to paragraph 13.8 (Termination of Contract for Cause and Written Adequate Assurances of Performance) or 13.9 (Termination of Contract for Convenience) of this Document 00 72 00 as the facts may warrant. If Design Builder does not agree with the County's determination of any adjustment in the Contract Sum or Contract Time as a result, the Design Builder may make a Claim as provided in Article 12 (Claims by Design Builder) of this Document 00 72 00.
- 13.5.7 To the furthest extent permitted by law, the County shall assume the defense of, and indemnify, and hold harmless the Design Builder, and all of its, members,

officers, directors, representatives, attorneys, agents, employees and consultants from and against all claims, suits, actions, losses, and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and reasonable attorneys' fees and consultants' fees, directly or indirectly arising out of, connected with or resulting from the exposure of persons or property to pre-existing Hazardous Substances, pollutants, or other toxic substances or contaminants encountered at the Site or the Project during the performance of the Work which were not indicated on the reports and information provided by the County, other information reasonably available to Design Builder, visual observation or reasonable investigation.

13.6 Suspension of Work. The County may, without cause, order the Design Builder 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 Documents caused by any such suspension, delay, or interruption calculated using the measures set forth in Document 01 26 00 (Contract Modification Procedures). No adjustment shall be made to the extent that: (a) performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Design Builder is responsible; or (b) an equitable adjustment is made or denied under another provision of the Contract Documents; or (c) the suspension of work was the direct or indirect result of the Design Builder's failure to perform any of its obligations. Adjustments made in cost of performance may have a mutually agreed fixed or percentage fee but, if the parties cannot so agree, the Design Builder may file a Claim under Article 12 (Claims by Design Builder) of this Document 00 72 00.

13.7 Force Majeure.

13.7.1 Events. Neither the County or the Design Builder shall be in breach of this Agreement for a failure to perform any of their obligations under this Agreement to the extent the delay in performance or inability to perform is caused by flood, lightning, earthquake, fire, explosion, epidemic, quarantine, hurricane, tornado, storm, war (declared or undeclared), riot or similar civil disturbance, strikes, work stoppages, lockouts and other labor disputes, acts of nature or the public enemy (including acts of terrorism), blockade, insurrection, revolution that is not within the party's reasonable control or reasonable advance planning and was not known as of the effective date of this Agreement (a "Force Majeure Event"). Neither the County nor the Design Builder shall be excused to the extent a Force Majeure Event results from that party's negligence or failure to perform any obligations under this Agreement including failure to reasonably anticipate ascertainable events or its failure to utilize commercially reasonable work-around or alternate solutions.

13.7.2 Exclusions. None of the following are a Force Majeure Event:

- 13.7.2.1 Strikes, work stoppages and other labor disputes (including collective bargaining disputes and lockouts) directed at Design Builder or with regard to Work by a Subcontractor on the Project Site, unless part of a general strike;
- 13.7.2.2 Shortage, cost increases or unavailability of materials and equipment, except to extent due to Force Majeure otherwise excusable hereunder;
- 13.7.2.3 Shortage, unavailability, or cost of labor;

- 13.7.2.4 Breakage or improper handling of materials and equipment;
 - 13.7.2.5 Conduct of any Subcontractors or Design Builder suppliers;
 - 13.7.2.6 Reasonably foreseeable climatic conditions;
 - 13.7.2.7 Delays in transportation, except to the extent due to an independent event of Force Majeure;
 - 13.7.2.8 Delay or denial of any permit or utility approval Design Builder is required to obtain; or
 - 13.7.2.9 Delays of delivery of equipment by any Subcontractor for any reason (unless due to a Force Majeure Event) or the failure of any such equipment to conform to the quality and specifications set forth in any subcontract.
- 13.7.3 Notice. Any party claiming excuse of nonperformance under this Agreement based on Force Majeure Event shall give the other party notice describing the particulars of the Force Majeure Event promptly after its occurrence, but in no event more than five (5) Days after the claiming party becomes aware of such occurrence.
- 13.7.3.1 Within fifteen (15) Days after giving notice of the Force Majeure Event, the claiming party shall give the other party an estimate of the Force Majeure Event's expected duration and probable impact on the Work. The claiming party shall continue to furnish the other party with timely regular reports during the continuation of the Force Majeure Event.
 - 13.7.3.2 The claiming party shall give the other party notice within five (5) Days of the cessation of all or part of the Force Majeure Event.
- 13.7.4 Mitigation and Management. Both the County and the Design Builder shall immediately exercise commercially reasonable efforts to mitigate or limit the impact to the Work and damages to each other as a result of the Force Majeure Event and shall begin activities to correct or cure the event or condition excusing performance.
- 13.7.4.1 Design Builder shall continue to perform any unaffected Work.
 - 13.7.4.2 The Design Builder and the County shall meet to agree upon a course of action to manage the impact of the Force Majeure Event and provide information to all interested parties.
 - 13.7.4.3 The claiming party's suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event.
 - 13.7.4.4 No default of the claiming party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall be excused as a result of the Force Majeure Event.

- 13.7.5 Resulting Impact. If Design Builder, after performing the mitigation efforts described in paragraph 13.7.4, cannot, in the absence of incurring cost or impacting the critical path elements of the Project Master Schedule, overcome the effects of the Force Majeure Event, Design Builder will be entitled to a Change Order to the extent Design Builder can substantiate the adverse impact in accordance with Article 14 (Modifications of the Contract Documents) below. Changes resulting from Force Majeure Event shall be limited to schedule adjustments, to the extent Design Builder demonstrates actual schedule delay caused solely by the effects of the Force Majeure Event, unless the County elects to expedite or make other adjustments instead of adjusting the Project Master Schedule.
- 13.7.5.1 The County will compensate Design Builder for the direct costs it incurs as a result of Force Majeure Event, to the extent that the County is satisfied that such costs are (a) part of a County-approved mitigation/recovery plan, and (b) reasonable and do not include any profit/fee or overhead.
- 13.7.5.2 With respect to payments made by the County to the Design Builder for changes for a Force Majeure Event, Design Builder shall reimburse such amounts to the extent such amounts are recovered from insurance coverages provided under this Agreement or are reduced by any savings or costs not incurred.
- 13.7.6 Termination for Force Majeure. County may terminate this Agreement for convenience if delays to the entire Project due to a Force Majeure Event exceed eighteen (18) months in the aggregate.
- 13.8 Termination of Contract for Cause. The Design Builder shall be in default of this Agreement and the County may terminate Design Builder's right to proceed under the Contract Documents, for cause:
- 13.8.1 Should Design Builder make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged bankrupt or insolvent, be the subject of an involuntary petition in bankruptcy which is not dismissed within thirty (30) Days, file 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, file any answer admitting or not contesting the material allegations of a petition filed against the Design Builder in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of the Design Builder or of all or any substantial part of the properties of the Design Builder, or if the Design Builder, its officers, directors or shareholders, take action to dissolve or liquidate Design Builder; or
- 13.8.2 Should the Design Builder commit a breach of the Contract Documents, the County may declare the Design Builder in default due to the breach, however, the County shall allow the Design Builder an opportunity to cure such breach within ten (10) Days of the date of written notice from the County to the Design Builder providing notice of the default; or, if such breach is curable but not curable within such ten (10) Day period, within such period of time as is reasonably necessary to accomplish such cure promptly. In order for the Design Builder to avail itself of a time period in excess of ten (10) Days, the Design

Builder must provide the County within the ten (10) Day period with a written plan acceptable to the County to cure said breach promptly which includes, for example, evidence of necessary resources, Subcontractor commitments, schedules and recovery schedules meeting Contract Document requirements and showing a realistic and achievable plan to cure the breach promptly the Design Builder must then diligently commence and continue such cure according to the written plan; or

- 13.8.3 Should Design Builder violate or allow a violation of any valid 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 written notice from the County to Design Builder 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 promptly. In order for the Design Builder to avail itself of a time period in excess of ten (10) Days, the Design Builder 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.
- 13.8.4 Should Design Builder at any time refuse or neglect to supply sufficient materials or workers to complete this Agreement and the Work as provided herein, for a period of ten (10) Days or more after written notice thereof by County, County at its option may furnish the same and deduct the reasonable expenses thereof from the Contract Sum, may terminate this Agreement after notice to Design Builder, or may pursue any other remedies available at law or equity.
- 13.8.5 If the County at any time reasonably believes that the Design Builder is or may be in default under its Contract, the County may in its sole discretion notify the Design Builder of this fact and request written assurances from the Design Builder of performance of the Contract and a written plan from the Design Builder to remedy any failures to perform the terms of the Contract which the County may advise the Design Builder of in writing. The Design Builder 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 paragraphs 13.8.2 or 13.8.3 above. Failure of the Design Builder to provide written adequate assurances of performance and the required written plan will constitute a material breach of this Agreement.
- 13.8.6 In event of termination for cause, the County shall immediately serve written notice thereof upon Surety and the Design Builder. Design Builder and Surety shall have the rights and obligations set forth in the Performance Bond. Subject to the Surety's rights under the Performance Bond (which rights are waived upon a default under the Performance Bond), the County may take over the Work and prosecute it to completion by contract or by any other methods it may deem advisable.
- 13.8.7 In the event of termination by the County for cause,
 - 13.8.7.1 The County shall compensate Design Builder for the value of the Work delivered to the County no earlier than the expiration of thirty five (35) Days after Completion and acceptance of all Work by the County as determined in accordance with the Contract Documents, subject to all rights of offset and back charges, and provided that Design Builder

provides the County with updated as-built and project record documents showing the work performed up to the date of termination. However, the County shall not compensate the Design Builder for its costs in terminating the Work or any cancellation charges owed to third parties;

13.8.7.2 The Design Builder shall deliver to the County within three (3) Business Days 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 materials, 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 Design Builder 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 Documents. The provisions of this paragraph 13.8 (Termination of Contract for Cause) shall not be interpreted to diminish any right which the County may have to claim and recover damages for any breach of this Agreement, but rather, the Design Builder shall compensate the County for all loss, cost, damage, expense, and/or liability suffered by the County as a result of such termination and failure to comply with the Contract Documents.

13.8.7.3 Except as otherwise provided in the Contract Documents, the County's rights under this paragraph 13.8.6 shall be specifically enforceable to the greatest extent permitted by law. The County shall, to the extent applicable, have all other rights and remedies set forth in any other Contract Document.

13.8.8 The County may terminate for cause portions or parts of the Work, 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, Design Builder shall cooperate with a completing contractor as required under Article 6 (Construction by the County or by Separate Contractors) of this Document 00 72 00.

13.8.9 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 the Design Builder shall have only the recovery rights specified in paragraph 13.9 (Termination of Contract for Convenience) below. Any Design Builder claim arising out of a termination for cause, however, shall be made in accordance with Article 12 (Claims by Design Builder) of this Document 00 72 00. No other loss cost, damage, expense or liability may be claimed, requested or recovered by the Design Builder.

13.9 Termination of Contract for Convenience.

13.9.1 The County may terminate performance of the Work under the Contract Documents 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. Termination shall be effected by the County delivering to the Design Builder written notice of termination specifying the extent to which performance

of the Work under the Contract Documents is terminated, and the effective date of the termination.

13.9.2 After receiving a notice of termination under paragraph 13.9.1 above, and except as otherwise directed by the County, the Design Builder shall:

13.9.2.1 Stop Work under the Contract Documents on date and to extent specified in the notice of termination;

13.9.2.2 Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete portion of Work under the Contract Documents which is not terminated;

13.9.2.3 If not directed by the County to assign the same, terminate all orders and Subcontractors, or assign to the County in manner, at times, and to extent directed by the County, all right, title, and interest of the Design Builder under orders and subcontracts. 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;

13.9.2.4 Settle all outstanding liabilities and all claims arising out of any 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 paragraph 13.9 (Termination of Contract for Convenience);

13.9.2.5 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, drawings, specifications, information, and other property which, if the Project had been completed, would have been required to be furnished to the County;

13.9.2.6 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 this paragraph 13.9.2, but the Design Builder 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 Design Builder under the Contract Documents or shall otherwise be credited to the price or cost of Work covered by the Contract Documents or paid in such other manner as the County may direct;

13.9.2.7 Complete performance of the part of the Work which was not terminated by the notice of termination; and

13.9.2.8 Take such action as may be necessary, or as the County may direct, to protect and preserve all property related to the Contract Documents which is in the Design Builder's possession or control and in which the County has or may acquire an interest.

- 13.9.3 After receipt of a notice of termination under paragraph 13.9.1 above, the Design Builder shall submit to the County its termination claim, in form and with all certifications required by the Contract Documents. The Design Builder's termination claim shall be submitted promptly, but in no event later than two (2) months from effective date of the termination. The Design Builder and the County may agree upon the whole or part of the amount or amounts to be paid to the Design Builder because of a total or partial termination for convenience of Work. If the Design Builder and the County fail to agree on the whole amount to be paid to the Design Builder because of the termination for convenience of the Work, County's total liability to Design Builder by reason of the termination shall be the total (without duplication of any items) of:
- 13.9.3.1 The reasonable cost to the Design Builder, without profit, for all Work performed prior to the effective date of the termination, including the Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the Project Master Schedule and the Schedule of Values. Deductions shall be made for cost of materials to be retained by the Design Builder, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits or offsets against cost of Work. Reasonable cost will include reasonable allowance for Project overhead and general administrative overhead.
 - 13.9.3.2 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 Documents and excessive actual cost shall be disallowed.
 - 13.9.3.3 Reasonable costs to the Design Builder of handling material returned to vendors, delivered to the County or otherwise disposed of as directed by the County.
 - 13.9.3.4 A reasonable allowance for the Design Builder's internal administrative costs in preparing termination claim.
 - 13.9.3.5 The County shall have no obligation to pay the Design Builder under this paragraph 13.9 (Termination of Contract for Convenience) unless and until the Design Builder provides the County with updated and acceptable as-builts and Project record documents for Work completed prior to termination.
 - 13.9.3.6 Reasonable demobilization costs, and reasonable payments made to Subcontractors or suppliers on account of termination.
- 13.9.4 In no event shall the County be liable for unreasonable costs incurred by the Design Builder or Subcontractors after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, the cost of or anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, unreasonable post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety costs of any type, costs of preparing and submitting the Design Builder's Proposal, attorney fees of any type and all other costs relating to prosecution of claim or lawsuit.

- 13.9.5 In arriving at the amount due the Design Builder under this clause there shall be deducted in whole or in the appropriate part(s) if the termination is partial:
- 13.9.5.1 All unliquidated advances or other payments on account previously made to the Design Builder, including without limitation all payments which are applicable to the terminated portion of the Contract Documents,
 - 13.9.5.2 Any claim which the County may have against the Design Builder in connection with the Contract Documents, and
 - 13.9.5.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by the Design Builder or sold under provisions of paragraph 13.9 (Termination of Contract for Convenience), and not otherwise recovered by or credited to the County.
- 13.10 Contingent Assignment of Subcontracts. The Design Builder hereby assigns to County all of its right, title and interest in, to and under each Subcontract, including any agreement for the provision of Project services by the Architect, now or hereafter entered into by Design Builder for performance of any part of the Work, provided that:
- 13.10.1 The assignment shall only be effective after the County's termination of the Design Builder's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) pursuant to paragraphs 13.8 (Termination of Contract for Cause) or 13.9 (Termination of Contract for Convenience) above;
 - 13.10.2 The assignment is effective only for the Subcontracts which the County expressly accepts by notifying the Subcontractor in writing;
 - 13.10.3 The assignment is subject to the prior rights, if any, of the Surety, obligated by the Performance Bond provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;
 - 13.10.4 After the effectiveness of an assignment, the Design Builder shall, at its sole cost and expense (except as otherwise provided in paragraphs 13.8 (Termination of Contract for Cause and Written Adequate Assurances of Performance) or 13.9 (Termination of Contract for Convenience)), 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
 - 13.10.4.1 Nothing in this paragraph 13.10 (Contingent Assignment of Subcontracts) shall modify or limit any of the Design Builder'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;
 - 13.10.4.2 The County may accept the assignment at any time during the course of the Work and prior to Completion in the event of a suspension or termination of Design Builder's rights under the Contract Documents. Such assignment is part of the consideration to the County for entering into the Contract with the Design Builder and may not be withdrawn prior to Completion.

13.11 Remedies and Contract Integration.

- 13.11.1 Subject to the Contract Document provisions regarding the Design Builder 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 the County and the Design Builder arising out of or relating to Contract Documents, any breach thereof or the Project, shall be decided in the applicable court of competent jurisdiction located in the State of California, County of Alameda. Each of County and Design Builder hereby waive its rights under Code of Civil Procedure section 394 to file a motion to transfer any action or proceeding arising out of the Contract Documents to another venue. All County remedies provided in the Contract Documents 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 the County and the Design Builder shall have any and all other equitable and legal rights and remedies which it would have according to law that are not inconsistent with the provisions of the Contract Documents.
- 13.11.2 The Contract Documents, any Contract Modifications and Change Orders shall represent the entire and integrated agreement between the County and the Design Builder regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents, and any Contract Modifications and Change Orders, 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 the Contract Documents or written modifications. The County and the Design Builder represent and agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written modification in sole reliance upon the information set forth or referenced in the Contract Documents or Contract Modifications and the parties are not and will not rely on any other information.
- 13.11.3 In any proceeding to enforce the Contract Documents, the Design Builder and the County agree that the finder of fact shall receive detailed instructions on the meaning and operation of the Contract Documents, 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.
- 13.11.4 Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time 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.
- 13.11.5 No action or failure to act by the County or the County's Representative will constitute a waiver of a right afforded them under the Contract, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by the County or County's Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver. No provision contained in the Contract

Documents shall create or give to third parties any claim or right of action against the County, the County's Representative, or the Design Builder.

- 13.12 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 shall be included in the Proposal price for doing the Work. The Design Builder shall defend, indemnify and hold harmless the County and each of its officers, employees, consultants (including without limitation County consultants) and agents, including, but not limited to, the County Board of Supervisors and each County Representative, 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 Documents infringes 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 Design Builder 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.
- 13.13 Substitution for Patented and Specified Articles.
- 13.13.1 Except as noted specifically in Specifications, whenever in 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 the Design Builder may offer any substitute material or process that the Design Builder considers equal in every respect to that so designated and if material or process offered by the Design Builder is, in opinion of the County, equal in every respect to that so designated, its use will be approved. However, the Design Builder may utilize this right only by timely submitting a substitution request consistent with Document 01 60 00 (Product Requirements) as provided in Document 00 21 00 (Request for Proposals). A substitution will be approved only if it is permitted under Document 00 21 00 (Request for Proposals). following award of the Contract and 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, durability, functioning, impact on contiguous construction elements, overall schedule and design.
- 13.14 Interest of Public Officers. No representative, officer, or employee of the County, no member of the governing body of the locality in which the Project is situated, no member of the locality in which the County was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during the tenure of the official or for one (1) year thereafter, shall, as principal, agent, attorney or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.
- 13.15 Limit of Liability. NEITHER THE COUNTY, COUNTY BOARD OF SUPERVISORS, NOR THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, CONSULTANTS OR AGENTS (INCLUDING WITHOUT LIMITATION COUNTY CONSULTANTS) SHALL HAVE ANY LIABILITY TO DESIGN BUILDER FOR SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, EXCEPT TO THE LIMITED EXTENT THAT THESE CONTRACT DOCUMENTS OR APPLICABLE PUBLIC CONTRACTING STATUTES MAY SPECIFY THEIR RECOVERY.

- 13.16 Severability. Any provisions or portions thereof of these Contract Documents that are prohibited by, unlawful, 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 Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portions thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of the provisions and this Agreement 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.
- 13.17 Contract Documents and Exercise of Contract Responsibilities.
- 13.17.1 The Contract Documents shall not be construed to create a contract of any kind (a) between the County or its representatives and a Subcontractor of any tier (including, but not limited to, designers, architects and engineers) or (b) between any persons or entities other than the County and the Design Builder. The Design Builder 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 the Design Builder just as the Design Builder is responsible for the Design Builder's own acts, omissions or negligence.
- 13.17.2 The County and its agents do not, in exercising their responsibilities and authorities under the Contract Documents, assume any duties or responsibilities to any Subcontractor, subconsultant or supplier, nor does the County or its agents assume any duty of care to the Design Builder, its Subcontractors, or suppliers.
- 13.18 Title to Work: No Liens. Legal title to all Work shall pass to and vest in the County as Work is performed, and title to all materials and equipment shall pass to and vest in the County when such materials and equipment are delivered to the Site (or as soon as title passes from the vendor or supplier thereof). To the extent of payment by the County, the Design Builder 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 Agreement, and shall indemnify, defend and hold harmless those identified in paragraph 13.3.1 above 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. The Design Builder 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.
- 13.19 Proprietary or Confidential Information of County. The Design Builder understands and agrees that, in the performance of the services under this Agreement or in the contemplation thereof, the Design Builder may have access to private or confidential information, which may be owned or controlled by the County, and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the County. The Design Builder agrees that all information disclosed by the County to the Design Builder shall be held in confidence and used only in performance of the Contract. Design Builder shall exercise the same standard of care to protect such information, as a reasonably prudent consultant would use to protect its own proprietary data.

13.20 Ownership of Results/Works for Hire.

13.20.1 The Contract Documents, and all copies thereof, furnished to, or provided by, the Design Builder are and shall remain the property of the County. The County and the Design Builder explicitly agree that all materials and documents developed in the performance of this Agreement are the property of the County. The County shall have unlimited rights, for the benefit of the County, in all engineering analysis, drawings, designs, specifications, notes and any other documentation and other Work developed in the performance of this Agreement for the Project, including the right to re-use details of the design on any other County work at no additional cost to the County. The Design Builder agrees to, and hereby does, grant to the County a royalty-free license to all such data that the Design Builder may cover by copyright and to all designs as to which the Design Builder may assert any right or establish any claim to under the patent or copyright laws. The Design Builder, for a period up to ten (10) years from the date of Completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the request of the County. Design Builder, its Subcontractors, and its Subconsultants, shall have the right, subject to the County's prior written approval for accuracy of representation and content, to include images or the likeness of the Project in any of its publications or marketing materials.

13.20.2 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 Design Builder or its Subcontractors or designers in connection with services performed under this Agreement 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 Design Builder or its Subcontractors or designers under this Agreement are not works for hire under U.S. law, Design Builder hereby assigns all copyrights to such works to the County. With the prior written approval of the County, Design Builder may retain and use copies of such works for reference and as documentation of its experience and capabilities.

13.20.3 The Design Builder agrees to reasonably assist the County in every proper way to secure the County's rights in any copyrights, patents, mask work rights or other intellectual property rights relating, including the disclosure to the County of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the County shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, the sole and exclusive rights, title and interest in and to such copyrights, patents, mask work rights or other intellectual property rights relating thereto. The Design Builder further agrees that its obligation to execute or cause to be executed, any such instrument or papers shall continue after the termination of this Agreement. If the County is unable to secure the Design Builder's signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering the original works of authorship assigned to the County as above, then it hereby irrevocably designates and appoints the County and as the agent and attorney in fact to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent

or copyright registrations thereon with the same legal force and effect as if executed by the Design Builder.

- 13.20.4 To the furthest extent permitted by law, the County shall assume the defense of, and indemnify and hold harmless, the Design Builder and all of its member, officers, directors, representatives, attorneys, agents, employees, and consultants from and against all claims, suits, actions, losses, and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies directly or indirectly arising out of or connected with or resulting from: (a) amendments or modifications of any Design Deliverables made without the prior written consent of Design Builder; and (b) County's use of the Design Deliverables or any part of the Design Deliverables on a project other than the Project.
- 13.21 Compliance with Americans with Disabilities Act. The Design Builder 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. The Design Builder shall provide the services Specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Design Builder agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Design Builder, its Subcontractors, subconsultants, designers, employees, representatives, agents or assigns shall constitute a material breach of this Agreement.
- 13.22 Disputes. Nothing in this Paragraph shall allow the Design Builder to discontinue the Work during the course of any dispute and the Design Builder's failure to continue the Work during any and all disputes shall be considered a material breach of this Agreement. The Design Builder agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Work. The Design Builder also agrees that should the Design Builder discontinue the Work due to a dispute or disputes; the County may terminate this Agreement for cause. The Design Builder further agrees that should the Design Builder not properly perform the Work due to a dispute or disputes, any and all claims, whether in law or in equity, the Design Builder 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. Notwithstanding the above, the Design Builder, pursuant to Document 01 29 00 (Payment Procedures), will be entitled to be paid by the County for all undisputed work and will have the right to stop work, and ultimately to terminate this Agreement, if not timely paid by the County for any undisputed work.
- 13.23 Statute of Limitations. As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by County of the final Certificate for Payment, or the effective date of a termination of all of this Agreement, whichever is earlier, except for Latent defects, in which case the cause of action shall accrue on discovery of the Latent defect and its cause. Nothing herein will modify any right or obligation under Code of Civil Procedure §§ 337.1 and 337.15.
- 13.24 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 Agreement, 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.

- 13.25 Beneficial Occupancy. The County reserves the right, at its option and convenience, to occupy any part of the Work at any time prior to Completion upon ten (10) Days' notice to the Design Builder. Such occupancy is herein referred to as "Beneficial Occupancy." Beneficial Occupancy shall be subject to the following conditions:
- 13.25.1 The County Representative will make an inspection of the portion of the Project to be Beneficially Occupied and prepare a list of items to be completed or corrected prior to Completion. Prior to Beneficial Occupancy, County will issue a Certificate of Beneficial Occupancy on County's form, including acknowledgement of approval of occupancy by agencies having jurisdiction over the project.
 - 13.25.2 Beneficial Occupancy by the County shall not be construed by the Design Builder as an acceptance by County of that portion of the Work which is to be occupied.
 - 13.25.3 Beneficial Occupancy by the County shall not constitute a waiver of existing claims of the County or the Design Builder against each other.
 - 13.25.4 Unless otherwise agreed to by the parties, Design Builder shall provide, in the areas beneficially occupied by County and on a twenty-four (24) hour and seven (7) Day week basis as required until the Work is complete and final acceptance, utility services, heating, and cooling in the areas beneficially occupied and for systems in such areas which are in operable condition at the time of Beneficial Occupancy. All costs of and responsibility for the maintenance of beneficially occupied areas and for the operation and maintenance of Design Builder's equipment in such areas shall remain with the Design Builder during Beneficial Occupancy until the Work is completed and final acceptance.
 - 13.25.5 The guarantees to repair as defined in this Agreement, will commence upon the first dates of Beneficial Occupancy of any portions of the Construction Work actually occupied by the County pursuant to this paragraph 13.25 and equipment or systems "fully utilized" by the County. Equipment or systems shall not be considered "fully utilized" for the purpose of this paragraph 13.25.5 until all parts of the Project served by the equipment or systems are Beneficially Occupied.
 - 13.25.6 The County shall pay for any costs arising from County's Beneficial Occupancy, including the costs of providing security, janitorial and utility services in areas that are Beneficially Occupied by the County.
 - 13.25.7 The County will use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of the Design Builder's remaining Work.
 - 13.25.8 The Design Builder shall not be required to repair damage caused by the County in its Beneficial Occupancy.
 - 13.25.9 Except as may be required pursuant to paragraphs 13.25.4, 13.25.6 and 13.25.8 above, there shall be no added cost to County due to Beneficial Occupancy.

13.25.10 During Beneficial Occupancy, Design Builder shall continue to maintain all insurance required by the Contract in full force and effect.

13.26 Successors and Assigns. The County and the Design Builder respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, in whole or in part, without prior written consent of the other party. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all of its obligations under the Contract.

13.27 Correction of Errors and Omissions. The Design Builder agrees to correct any error or omission in the Construction Documents or any other contract deliverables at no additional cost to the County.

13.28 Endorsements. Design Builder shall not in its capacity as a contractor with County publicly endorse or oppose the use of any particular brand name or commercial product without the prior approval of the Board of Supervisors. In its County contractor capacity, Design Builder shall not publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely-accepted scientific basis for such claims or without the prior approval of the Board of Supervisors. In its County contractor capacity, Design Builder shall not participate or appear in any commercially-produced advertisements designed to promote a particular brand name or commercial product, even if Design Builder is not publicly endorsing a product, as long as Design Builder's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of County. Notwithstanding the foregoing, Contractor may express its views on products to other contractors, the Board of Supervisors, County officers, or others who may be authorized by the Board of Supervisors or by law to receive such views.

13.29 Use of Private Property. Design Builder shall not use private property for any purpose in connection with the Project absent a prior, written agreement with the affected property owner.

14. **MODIFICATIONS OF THE CONTRACT DOCUMENTS.**

14.1 Alterations, Modifications and Force Account Work.

14.1.1 No modification or deviation from the Contract Documents, including but not limited to the Design Criteria Documents will be permitted except by written Change Order, written Field Change Directive, or Construction Change Directive issued in accordance with Document 01 26 00 (Contract Modification Procedures), collectively referred to as a "Contract Modification."

14.1.2 The County may, without notice to the Sureties, make alterations, deviations, additions to, or deletions from the Contract Documents; 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 Design Builder shall perform such work under applicable provisions of the Contract Documents, 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 Design Builder shall accept and use without payment for

costs, markup, profit, or otherwise for such County-furnished labor, materials, and equipment.

- 14.1.3 Changes affecting the Contract Time or Contract Sum of the Work shall be set forth in a written Change Order that shall specify: (a) the work performed in connection with the change to be made; (b) the amount of the adjustment of the Contract Sum, if any, and the basis for compensation for the work ordered; and (c) the extent of the adjustment in the Contract time, if any. A Change Order will not become effective until signed by the County.
- 14.1.4 A Change Order will become effective when signed by the County. If the County exercises its right to decide disputed issues pertaining to changed Work as set forth in Articles 12 (Claims by Design Builder) and 14 (Modifications of the Contract Documents) of this Document 00 72 00, then the resulting Change Order shall be effective when signed by County, notwithstanding that the Design Builder has not signed it.
- 14.1.5 Changes not affecting the Contract Time or Contract Sum of the Work, in the County's discretion, may be set forth in a written RFI-Reply executed by the County. Execution of an RFI-Reply constitutes the Design Builder's agreement to make the specified change without change to the Contract Sum or the Contract Time.
- 14.1.6 Changes or deviations from Contract Documents affecting the Contract Time or Contract Sum of the Work shall not be made without the authority of an effective Change Order or Construction Change Directive as provided in Document 01 26 00 (Contract Modification Procedures), except in cases of emergency discussed in paragraph 16.4 (Emergencies) of this Document 00 72 00.
- 14.1.7 All Contract Modifications shall be diligently carried out by the Design Builder in accordance with the Contract Documents. 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 Documents shall be increased or decreased by the amount that the Design Builder 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 Design Builder's rights under Article 12 (Claims by Design Builder) of this Document 00 72 00. In all cases the Design Builder shall perform the changed work as directed by the County subject to the Design Builder's rights under Article 12. In cases where the County reaches such a determination, a Change Order shall be effective even if signed by the County only.

- 14.1.8 The Design Builder shall, upon the County's request, permit inspection of the original unaltered Escrow Bid Documents, 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.
- 14.1.9 Changes in the Work made pursuant to this Article 14 (Modifications of the Contract Documents) and extensions of Contract Time necessary by reason thereof shall not in any way release the guarantees/warranties given by the Design Builder pursuant to provisions of the Contract Documents, 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.

14.1.10 Procedures for Modifications of Contract Documents and for calculating the cost of extra Work are given in Document 01 26 00 (Contract Modification Procedures). Regarding delay and impact costs of any nature, the Design Builder may not seek delay compensation for on-Site or off-Site costs based on formulas, e.g., "Eichleay" or other formula. Rather, the Design Builder shall prove actual costs that were actually caused by the County caused delays. If the Design Builder requests compensation for delay to the construction, then the Design Builder shall prove and document actual costs plus markup per the cost categories and procedures in Document 01 26 00 in order to request, claim or prove compensation for delay.

14.1.11 Change Orders in excess of the County's approved limit must be approved by the County Board of Supervisors and a performance bond rider covering the changed Work executed before proceeding with the changed Work. The Design Builder is charged with knowledge of the County's approved Change Order limits and procedures in effect at the applicable time.

14.2 Entire Agreement.

14.2.1 The Contract Documents, and any Contract Modifications, shall represent the entire and integrated agreement between the County and Design Builder regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' agreement.

14.2.2 The Contract Documents, and any Contract Modifications, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this agreement or written modifications. The County and Design Builder represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Contract Documents or Contract Modifications and the parties are not and will not rely on any other information.

14.3 Modifications. The Contract Documents may be amended or modified only by a written amendment, Change Order, Field Change or Construction Change Order Directive (CCD) issued in accordance with the provisions of the Contract Documents, and particularly this Article 14 (Modifications of the Contract Documents) and Document 01 26 00 (Contract Modification Procedures). The Contract Documents may not be modified or supplemented orally or by implication. To be effective, any modification to the Contract Documents must be in writing and must be signed by an authorized representative of the County and satisfy all other requirements of this Document 00 72 00. A CCD shall only be used in the absence of total agreement on the terms of a Change Order and may, upon notice, consist of a Change Order executed by the County only.

15. **TIME ALLOWANCES.**

15.1 Time Allowance for Performance of Contract.

- 15.1.1 When the Contract has been signed by Design Builder and the County, and funds necessary to make payments as required under Contract are available, the County will serve a Notice to Proceed upon Design Builder 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 Design Builder at its legal address, or (at the County's option) by delivery by other means at the Design Builder's legal address.
- 15.1.2 The start date for Contract Time shall be the date indicated in the applicable Notice to Proceed.
- 15.1.3 By signing the Agreement, the Design Builder represents to the County that the Contract Time is reasonable for performing the Work and that the Design Builder is able to perform the Work within the Contract Time. Design Builder agrees that the County is purchasing the right to have the Design Builder present on the Project site for the full duration of the Contract Time applicable to the Construction Phase, even if Design Builder could finish the Contract in less than the Contract Time.
- 15.1.4 The Design Builder shall not, except by agreement or instruction of the County in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by the Contract Documents to be furnished by the Design Builder. The dates of commencement and completion of the Work shall not be changed by the effective date of such insurance.
- 15.1.5 The Design Builder shall proceed expeditiously with adequate forces and shall achieve Completion of the Work within the Contract Time. If the County's Representative determines and notifies the Design Builder that the Design Builder's progress is such that the Design Builder will not achieve Completion of the Work within the Contract Time, the Design Builder shall immediately and at no additional cost to the County, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Contract Time. Upon receipt of such notice from the County's Representative, the Design Builder shall immediately provide a recovery schedule and notify the County's Representative of all measures to be taken to ensure full Completion of the Work within the Contract Time.

The Design Builder shall reimburse the County for any extra costs or expenses (including the reasonable value of any services provided by County's employees) incurred by the County as the result of such measures.

15.2 Entitlement to Change of Contract Time.

- 15.2.1 The Contract Time may only be changed by Change Order or by Contract Modification and all time limits stated in the Contract Documents are of the essence of the Contract Documents.
- 15.2.2 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:

- 15.2.2.1 Changes in the Work ordered by the County;
 - 15.2.2.2 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 the Design Builder has substantially performed its responsibilities under the Contract Documents, including but not limited to, its cooperation and coordination responsibilities required by the Contract Documents;
 - 15.2.2.3 A Force Majeure as defined in paragraph 13.7 (Force Majeure) above.
 - 15.2.2.4 Impacts to the Project Master Schedule caused by Regulatory Agency review of County-initiated Change Orders in accordance with Document 01 26 00 (Contract Modification Procedures).
 - 15.2.2.5 Impacts to the Project Master Schedule caused solely by Regulatory Agency review of Change Orders that result from Governmental or Regulatory Agency requirements in accordance with Document 01 26 00 (Contract Modification Procedures).
 - 15.2.2.6 Delays caused by Regulatory Agency's failure or inability to review the Design Builder's complete and coordinated documents within the Regulatory Agency review durations published in the Design Builder's Project Master Schedule in accordance with the requirements of paragraph 1.3.7 of Document 01 32 16 (Schedules and Reports).
- 15.2.3 The Contract Time shall not be extended for any cause identified in paragraph 15.2.2 above, however, unless:
- 15.2.3.1 The Design Builder actually has been prevented from completing any part of the Work within the Contract Time due to delay that is beyond the Design Builder's control and due to reasons for which the Design Builder 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 the Design Builder);
 - 15.2.3.2 A claim for delay is made as provided herein; and
 - 15.2.3.3 The Design Builder submits a Time Impact Evaluation as required under Document 01 32 16 (Schedules and Reports) that demonstrates actual delay to critical Work activities that actually delay the progress of the Work in the amount of time requested.

15.3 Weather Delays.

- 15.3.1 Delays due to abnormal or adverse weather conditions will not be allowed for weather conditions, which fall within parameters listed in this paragraph 15.3 (Weather Delays). Adverse weather delays may be allowed only if the number of Days of Project delay due to adverse weather exceeds these parameters on a monthly basis and the Design Builder proves that the adverse weather actually caused delay to the completion of the Project. The Design Builder shall give written notice of intent to claim an adverse weather day within one (1) Day of the

adverse weather day occurring. Rain parameters are as follows, pro-rated in the individual month the Design Builder starts and finishes Work:

- 15.3.1.1 Rain Days: January, [11]; February, [10]; March, [10]; April, [6]; May, [3]; June, [1]; July, [0]; August, [0]; September, [1]; October, [4]; November, [7]; December, [10].
- 15.3.1.2 In order to qualify as an adverse weather day with respect to the foregoing parameters, daily rainfall must exceed one-tenth (0.10) of an inch or more at the Oakland WSO AP, California, station, as measured by the National Oceanic & Atmospheric Administration, and Design Builder must prove that the rain actually caused delay as set forth above.
- 15.3.2 The Design Builder shall include the foregoing rain parameters as a monthly activity in its Project Master Schedule. If Work on the critical path is affected by rain, the Design Builder shall notify the County and request that the Days be moved to the affected activities. Any adverse weather Days remaining shall be considered Project float.
- 15.3.3 Adverse weather delay for rain shall be recognized for the actual period of time the Design Builder proves the Completion of the Project was delayed by rain exceeding the Specified parameters. For example, and not by way of limitation, if rain exceeding the Specified parameters does not in fact delay the Design Builder's progress on the critical path, then no time extension shall be recognized; and conversely, if the Design Builder proves that rain exceeding the Specified parameters causes delay to the Design Builder for a period longer than the number of rain Days incurred (e.g., if it rains during grading work), then the Design Builder shall be entitled to a time extension equal to the actual period of such delay. Design Builder must verify that adverse weather caused delays in excess of seventy-five percent (75%) of the normal labor and equipment force working on current critical path work items on the accepted Project Master Schedule for a period of at least five hours, and the crew is dismissed as a result thereof.
- 15.3.4 The Design Builder shall take reasonable steps to mitigate potential weather delays, such as de-watering the Site, and covering the Work and material that could be affected adversely by weather. Failure to do so shall be cause for the County to not grant a time extension due to adverse weather, where the Design Builder could have avoided or mitigated the potential delay by exercising reasonable care.
- 15.4 Notice of Delay. Within ten (10) Days of the beginning of any delay or of becoming aware of any delay, whichever is later, the Design Builder 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.
 - 15.4.1 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 Design Builder's estimate of additional time required together with a full recital of causes of unavoidable delays relied upon. The Design Builder shall comply with Document 01 32 16 (Schedules and Reports).

- 15.4.2 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 the Design Builder in writing.
- 15.4.3 No time extensions shall be considered without related documents and justifications necessary for the County to make a determination.
- 15.4.4 No time extensions shall be granted for delays for which the Design Builder fails to give timely and proper notice and the Design Builder hereby waives any and all damages or other remedies for delay for which timely and proper notice is not given.
- 15.4.5 Any request for extension of time shall be accompanied by the Design Builder'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 as specified in Document 01 32 16 (Schedules and Reports). The 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 paragraph 15.4 (Notice of Delay).
- 15.5 No Damage for Design Builder Caused Delay. The Design Builder 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 the Design Builder caused delays.
- 15.6 Time Extension Without Compensation. The Design Builder may receive, in County's sole discretion, a time extension without compensation for: (a) delays resulting from causes beyond the reasonable control of the Design Builder and the County, including a Force Majeure (see paragraph 13.7 above), (b) periods of delay caused jointly by the Design Builder and either the County or Regulatory Agency, or (c) periods of concurrent delay which include both delay for which Design Builder is entitled to time extension and delay for which Design Builder is not entitled to any time extension. In such cases, a time extension without compensation shall constitute the Design Builder's sole and exclusive remedy for such delays.
- 15.7 Compensable Delay. The Design Builder may receive a time extension and an adjustment in the Contract Sum as compensation in conformance with Document 01 26 00 (Contract Modification Procedures) for delays caused by Regulatory Agency, to the extent permitted by the Contract Documents, or delays caused by the County or by the County's contractors, except that the Design Builder shall not be entitled to damages for delay to the Work caused by the following reasons:
- 15.7.1 The County's enforcement of any government act or regulation, or the provisions of the Contract Documents, Design Builder's failure to perform its cooperation and coordination responsibilities required by the Contract Documents, and 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 the Design Builder's failure to perform its cooperation and coordination responsibilities required by the Contract Documents. .

15.7.2 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.

15.8 Liquidated Damages.

15.8.1 Execution of the Contract by the Design Builder shall constitute acknowledgement by Design Builder that Design Builder understands, has ascertained and agrees that the County will actually sustain damages in the amount fixed in the Contract 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. The Design Builder 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 and shall be the County's sole remedy for recovery of damages it directly incurs due to delays.

15.8.2 There shall be deducted from any money due or to become due to Design Builder all sums representing liquidated damages. Should Design Builder be inexcusably delayed in the performance of the Work, County may deduct liquidated damages based on its estimated period of late completion. County need not wait until Completion to withhold liquidated damages from Design Builder.

15.8.3 Liquidated damages shall be considered not as a penalty but as agreed monetary damage for all actual damages sustained by the County for delay, including but not limited to loss of revenue and increased Project administration expenses, including extra inspection, construction management and architectural and engineering expenses. Except as against delay claims by the Facility that are deemed to be included therein, liquidated damages shall not be deemed to include within their scope claims of third parties against the County.

15.8.4 Should money due or to become due to Design Builder be insufficient to cover aggregate liquidated damages due, then Design Builder forthwith shall pay the remainder of the assessed liquidated damages to County.

15.8.5 Design Builder and County agree that time is of the essence for completion of the Project pursuant to these Contract Documents.

16. **WORKING CONDITIONS AND PREVAILING WAGES.**

16.1 Use of Site/Sanitary Rules.

16.1.1 All portions of the Work shall be maintained at all times in neat, clean and sanitary condition.

16.1.2 Toilets shall be furnished by the Design Builder where needed, for use of the Design Builder's, 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 the County.

- 16.1.3 The Design Builder 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 Documents 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. The Design Builder 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.
- 16.1.4 During the progress of the Work, the Design Builder 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, the Design Builder 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. The Design Builder shall leave the Site clean and ready for occupancy by the County at Beneficial Occupancy and Completion of Work. The Design Builder shall restore to original and clean condition all structures or property not designated for alteration by Contract Documents.
- 16.1.5 The Design Builder 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 the Design Builder subject any part of the Work structures or adjacent property to stresses or pressures that will endanger it. The Design Builder shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform the 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.
- 16.2 Protection of Work, Persons and Property, and Public Access. The Design Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with Work. The Design Builder shall comply with all safety requirements specified in any safety program established by County, or required by state, federal or local laws and ordinances. The Design Builder shall be responsible for all damage to Work, property or structures, all injuries to persons, and all damage and interruptions to the County's operations, arising from the performance of Work of the Contract Documents. Except as otherwise expressly approved by the County in writing, the Design Builder 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.
- 16.2.1 The Design Builder 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. The Design Builder 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.
- 16.2.2 The Design Builder shall remedy all damage, injury or loss or interruption to any property or operations referred to in this paragraph 16.2 (Protection of Work, Persons and Property), caused, directly or indirectly, in whole or in part, by the Design Builder, 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. The Design Builder'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 enforcing any rights against any person or persons causing damage to Design Builder's work.

16.2.3 The Design Builder 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.

16.2.4 The County may, at its option, retain such monies due or to become due under the Contract Documents as the County deems necessary until any and all suits or claims against Design Builder for injury to persons or property or operations shall be settled, and the County receives satisfactory evidence to that effect.

16.3 Responsibility for Safety and Health.

16.3.1 The Design Builder shall insure that the Design Builder (and its employees, agents and invitees), Subcontractors (and each tier of Subcontractors' employees, agents, invitees), and subconsultants (and their employees, agents and invitees) while at the Site comply with applicable health and safety laws including, without limitation, the federal Occupational Safety and Health Act of 1970 (and all rules and regulations issued pursuant thereto) and any of the County's safety regulations, as amended from time to time. The Design Builder shall further comply with any directions of the County regarding protective clothing, head covering, eye protection, etc. The County shall have no duty to issue such directions.

16.3.2 Safety of all persons employed by the Design Builder or Subcontractors or designers and their respective agents and invitees on the Site shall be the full responsibility of the Design Builder. The Design Builder shall notify the County, in writing, of the existence of hazardous conditions, property or equipment at the Site, which are not under the Design Builder's control. However, it shall be the Design Builder's responsibility to take necessary precautions against injury to persons or damage to property from recognized hazards until corrected by the responsible party.

16.3.3 Design Builder is required to ensure Material Safety Data Sheets are available in a readily accessible place at the Work Site for any material requiring a Material Safety Data Sheet per the Federal "Hazard Communication" standard, or employees right to know law. Design Builder is also required to ensure proper labeling on substance brought onto the job site and that any person working with the material or within the general area of the material is informed of the hazards of the substance and follows proper handling and protection procedures. Two additional copies of the Material Safety Data Sheets shall also be submitted directly to the County.

16.3.4 Design Builder shall confine all persons under the Design Builder's employ or employ of its Subcontractors, designers or any other person acting on behalf of the Design Builder or Subcontractors or designers to that portion of the Site where the Work under the Contract Documents 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 the Design Builder to use. Within such areas, except those routes for ingress and egress over which the Design Builder has no right of control, the Design Builder shall provide safe means of access to all places at which persons may at any time have occasion to be present.

- 16.3.5 Design Builder shall submit a Safety Plan consisting of Illness and Injury Prevention Program (IIPP), Emergency Response Action Plan, and 24-Hour Contact List. Design Builder shall include flowcharts “decision tree” data that may be posted strategically throughout the project site.
- 16.4 Emergencies. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, the Design Builder, 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. Design Builder shall give the County prompt written notice if the Design Builder believes that any significant changes in the Work or variations from Contract Documents have been caused thereby. If the County determines that a change in the Contract Documents is required because of the action taken by the Design Builder in response to such an emergency, a Contract Modification, Change Order or Field Change will be issued to document the consequences of such action.
- 16.5 Use of Roadways and Walkways. The Design Builder 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 the Work, and no satisfactory detour route exists, the Design Builder shall, before beginning interference, and with the 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 the Contract Documents.
- 16.5.1 Design Builder shall submit a Traffic Management Plan.
- 16.6 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 Government Code § 12940, and every contractor for public works violating the provisions of Labor Code § 1735 is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the Labor Code.
- 16.7 Prevailing Wages.
- 16.7.1 Pursuant to Labor Code §§ 1770 et seq., the Design Builder shall pay to persons performing labor in and about the Work provided for in the Contract an amount equal to or more than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall be equal to or more than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Agreement. The Design Builder shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each Site.

- 16.7.2 The Design Builder shall forfeit, as a penalty to the County, Fifty Dollars (\$50.00) for each laborer, workman, or mechanic employed in performing labor in and about the work provided in the Contract Documents for each Day, or portion thereof, on which such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under these Contract Documents by him or her or by any Subcontractor or designer under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division 2 of the Labor Code. The sums and amounts which shall be forfeited pursuant to this paragraph 16.7.2 and the terms of the Labor Code shall be withheld and retained from payments due or to become due to the Design Builder under this Agreement and the terms of the Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by the County. The final amount of forfeiture shall be determined by the Labor Commissioner pursuant to Labor Code § 1775. Without in any way limiting the foregoing or any other provisions of the Agreement, the parties specifically stipulate that the relevant penalties and forfeitures provided in the Labor Code, especially in sections 1775 and 1813 concerning prevailing wages and hours, as well as section 1776 concerning certified payroll records apply to this Agreement.
- 16.7.3 The Design Builder shall insert in every subcontract, design agreement or other arrangement which Design Builder may make for performance of work or labor on the Work provided for in the Contract Documents, a provision that the Subcontractor or designer shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the Labor Code.
- 16.7.4 Contractor stipulates that it shall comply with all requirements of Project Stabilization Community Benefits Agreement (PSCBA) / Project Labor Agreement (PLA) of the County of Alameda, and shall pay to persons performing labor in and about the Work provided for in the Contract an amount equal to or more than the following:
- 16.7.4.1 Wage rate and fringe benefit payments and classification for that person's corresponding labor classification as required by the Department of Industrial Relations; and
- 16.7.4.2 Wage rate and fringe benefit payments and classification for that person's corresponding labor classification as required under the Project Stabilization Community Benefits Agreement (PSCBA) / Project Labor Agreement (PLA) of the County of Alameda and California Labor Code.
- 16.7.5 If there are conflicts between the Wage rate and fringe benefit payments and classification between the Department of Industrial Relations and the Project Stabilization Community Benefits Agreement (PSCBA) / Project Labor Agreement (PLA) of the County of Alameda, Contractor shall pay the higher wage rate and fringe benefits.
- 16.7.6 The Design Builder shall comply with all applicable federal, state and local laws and regulations regarding wage and hour laws, including without limitation Labor Code § 1813.

16.7.7 Design Builder shall and shall cause its Subcontractors to 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 sections must be maintained throughout the term of this Agreement.

16.8 Environmental Controls. The Design Builder shall comply with all rules, regulations, ordinances and statutes that apply to any work performed under the Contract Documents 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. Design Builder is 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 implement conditions on the Project to ensure that any environmental impact is minimized in accordance with the Project CEQA compliance documents.

16.8.1 Hazardous Waste or Materials Disposal.

16.8.1.1 Design Builder has the sole responsibility for determining current waste storage, handling, transportation, and disposal regulations for the Site and for each waste disposal facility. Except for generation fees and costs to be borne by the County, Design Builder must otherwise comply fully and at its sole cost and expense with these regulations and any applicable law. County may, but is not obligated to, require submittals with this information for it to be reviewed consistent with the Contract Documents.

16.8.1.2 Design Builder shall develop and implement a system acceptable to County to track hazardous waste from the Site to disposal, including appropriate "Hazardous Waste Manifests" on the relevant federal Environmental Protection Agency ("EPA") form, so that County may and is able to track the volume of Project waste delivered to and deposited in each landfill or disposal facility. Design Builder shall deliver to County upon its request each original landfill or disposal facility certificate of receipt.

16.8.1.3 Design Builder shall provide County with the name and address of each waste disposal facility prior to any disposal, and County shall have the express right to reject any proposed disposal facility. Design Builder shall not use any disposal facility to which County has objected. Design Builder shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction forwarding the original to the County upon its request.

16.9 Shoring Safety Plan.

16.9.1 At least five (5) Days in advance of excavating any trench five (5) feet or more in depth, the Design Builder 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 § 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.

- 16.9.2 During the course of the Work, the Design Builder shall submit shoring plans to Regulatory Agency as required. The Design Builder shall allow adequate time for Regulatory Agency review and approval of all plans.
- 16.9.3 During the course of the Work, the Design Builder 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. Design Builder 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 the Design Builder of its responsibilities under this paragraph 16.9 (Shoring Safety Plan).

END OF DOCUMENT