

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c)(1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

Public Contract Code Section 20104.4: The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b)(1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) 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.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

Public Contract Code Section 20104.6: (a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

4.4.1.2 Pursuant to Assembly Bill 626 (2015-2016 Reg. Sess.) the text of Public Contract Code section 9204 is included as follows:

- (a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.
- (b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.
- (c) For purposes of this section:
 - (1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
 - (A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
 - (B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
 - (C) Payment of an amount that is disputed by the public entity.
 - (2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.
 - (3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.
 - (B) "Public entity" shall not include the following:
 - (i) The Department of Water Resources as to any project under the jurisdiction of that department.
 - (ii) The Department of Transportation as to any project under the jurisdiction of that department.
 - (iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.
 - (iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

- (v) The Military Department as to any project under the jurisdiction of that department.
- (vi) The Department of General Services as to all other projects.
- (vii) The High-Speed Rail Authority.
- (4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.
- (5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.
- (d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.
- (B) The claimant shall furnish reasonable documentation to support the claim.
- (C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.
- (D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.
- (2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant 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, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- (B) Within 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 public entity shall provide the claimant 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 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing,

shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

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

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

- (3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.
- (4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.
- (5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity 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 on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

4.4.2 Except as provided for in Subparagraph 4.4.1, any other claims, disputes or other matters in controversy shall be resolved as follows. In lieu of, or prior to litigation, the Parties shall endeavor to settle disputes by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect unless the Parties mutually agree otherwise to a different method of alternative dispute resolution. Mediation shall be non-binding and utilize services of a mediator mutually acceptable to the Parties. If the Parties cannot agree on a mediator, then the American Arbitration Association shall appoint a mediator trained in construction industry disputes.

4.4.3 Any dispute which cannot be resolved between the Parties shall be resolved through litigation in a court of competent jurisdiction of the State of California. Venue for any such litigation concerning this Project or Agreement shall be in the Superior Court of California, San Bernardino County, San Bernardino District and Contractor agrees to incorporate this provision into all subcontracts.

4.4.3.1 Each Party hereby waives any law or rule of court that would allow them to request or demand a change of venue. If any third party brings an action or claim concerning this Contract, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

5 SUBCONTRACTORS

5.1 Award of Subcontracts

5.1.1 Subcontractor Listing. The Contractor shall list its Subcontractors, and shall make no substitution except in accordance with Public Contract Code Sections 4100 et seq. ("Subcontractor Listing Law").

5.1.1.1 Substitution Process. Any request of the Contractor to substitute a listed Subcontractor will be considered by the County only if such request is in strict conformity with this Paragraph 5.1 and Chapter 4 of the California Public Contract Code (commencing with Section 4100). All costs and fees, including all costs of the hearing, incurred by the County in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contractor; such costs and fees may be deducted by the County from the Contract Sum then or thereafter due the Contractor. For purposes of a hearing for the substitution of subcontractors (pursuant to the Public Contract Code commencing with Section 4100) the awarding authority shall be the Director of the Project and Facilities Management Department, or his/her designee.

5.1.1.2 Responsibilities of Contractor upon Substitution of Subcontractor. Neither the substitution nor the County's consent to Contractor's substitution of a listed Subcontractor shall relieve Contractor from its obligation to complete the Work within the Contract Time and for the Contract Sum. In the event that the County determines that revised or additional Submittals are required of the newly substituted Subcontractor, the County shall promptly notify the Contractor, in writing, of such requirement and the time for Submittal. In the event that the revised or additional Submittals are not submitted by Contractor within the time specified, Contractor shall be solely responsible for delays in the Work arising from the untimely Submittal. Contractor shall reimburse the County for all fees and costs incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant to this paragraph; the County may deduct such fees and costs from any portion of the Contract Sum then or thereafter due the Contractor. In the event that additional or revised Submittals are required pursuant to this paragraph, such requirement shall not result in an increase to the Contract Time or the Contract Sum.

5.2 Subcontractor Relations

5.2.1 Agreements. By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by Contract Documents, assumes toward the County. Each such agreement shall preserve and protect the rights of the County under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the

subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the County. The Contractor shall require each Subcontractor to enter into similar agreements with their Sub-subcontractors. The Contractor shall make available to each Subcontractor, prior to the execution of the agreement, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph. At a minimum, each agreement shall:

- (1) Require that the Work being performed pursuant to such agreement, as the case may be, be performed in accordance with the requirements and intent of the Contract Documents and provide no less than five percent (5%) retainage unless otherwise indicated in Agreement between the County and Contractor;
- (2) Require submissions of Applications for Payment in the form required by the Contract Documents, together with invoices and billings supporting such applications and conditional and unconditional lien releases in the form required by the Contract Documents completed by it and by its Sub-Subcontractors as a condition to the disbursement of any progress payment next due and owing to it;
- (3) Require the Subcontractor, Sub-Subcontractor or supplier, as the case may be, to maintain insurance coverage as provided in the Contract Documents and to file required certificates of such coverage and additional insured endorsements with County, and, upon County's request, to provide copies of such insurance policies to County.
- (4) Require each Subcontractor, Sub-Subcontractor, and supplier to furnish to Contractor or the applicable Subcontractor, as the case may be, in a timely fashion all information necessary for transmittal of Submittals and the reports required herein;
- (5) Require that each Subcontractor and supplier continue to perform under its subcontract if the Contract is terminated and if County takes an assignment of the subcontract or supply agreement and requests the Subcontractor or supplier to continue such performance;
- (6) Require each Subcontractor, Sub-Subcontractor, and supplier to remove all debris created by its activities;
- (7) Provide that in the event that County accepts the conditional assignment of the subcontract, County shall only be responsible to the Subcontractor for those obligations that accrue subsequent to County's acceptance of the assignment;
- (8) Require the Subcontractor to resolve all disputes involving County according to the dispute resolution procedure established in Paragraph 4.4 herein;

- (9) Contractor shall cause each subcontract to expressly include the following requirement:

“The County and entities and agencies designated by the County shall have access to and the right to audit and the right to copy at the County’s cost all of Subcontractor’s and supplier’s books, records, contracts, correspondence, instructions, Drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Subcontractor shall preserve all such records and other items for a period of at least five (5) years after Final Completion.” and

- (10) Require the Subcontractor engaged upon the Site to arrange the storage of materials and equipment and performance of his Work so as to interfere as little as possible with other persons engaged in Work for the County upon the same Site.

5.2.2 Precedence. If any provision of any Subcontractor supply agreement is inconsistent with any provision of the Contract Documents or the intent of the Contract Documents, then the Contract Documents shall control.

5.2.3 Payments. Contractor shall make payment to Subcontractor within seven (7) days of receipt of each progress payment, in accordance with Public Contract Code Section 10262 and Business and Professions Code Section 7108.5. County hereby reserves the right, upon written notice to Contractor, to make, at any time, and from time-to-time, payments directly to each Subcontractor, and, if such rights shall be exercised by County, then such amount shall be credited against the Contract Sum due to Contractor hereunder and County shall be relieved and released from the obligation to make such payment to Contractor and Contractor shall be relieved and released as to County from the obligation to make such payments to each Subcontractor paid by County, but not from any of the other obligations and responsibilities of Contractor to County under the Contract Documents.

5.2.4 Contractor Responsibility. The Contractor shall be responsible for all acts and omissions of Subcontractors and for all Contract Work regardless of any subcontracts. All interest of the County in the Subcontractor’s work shall be coordinated through the Contractor.

5.3 Contingent Assignment of Subcontractor and Material Supply Agreements

Each Subcontractor and supplier agreement for a portion of the Work is assigned by the Contractor to the County provided that:

- (1) Assignment is effective only after termination of the Contract by the County only for those subcontracts which the County accepts by notifying the Subcontractor or supplier, and Contractor in writing;

- (2) Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract; and
- (3) Upon exercise of this right of assignment, County has the right to reassign the agreement.

6 CONSTRUCTION BY COUNTY OR BY SEPARATE CONTRACTORS

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

6.1.1 County's Right to Perform. The County reserves the right to perform construction or operations related to the Project with the County's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site. If the Contractor claims that delay or additional cost is involved because of such action by the County, the Contractor shall make such Claim as provided in Paragraph 4.3 herein.

6.1.2 Reserved.

6.1.3 Coordination. The County shall provide for coordination of the activities of the County's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other Separate Contractors and the County in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement. Upon County's written approval, the revised Construction Schedule shall then constitute the schedule to be used by the Contractor, Separate Contractors, and the County until subsequently revised and approved by County.

6.1.4 Cooperation. Each Contractor or Subcontractor engaged upon the Site shall arrange the storage of materials and equipment and performance of his work so as to interfere as little as possible with other persons engaged in work for the County upon the same Site.

6.2 County's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the County as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the County may clean up and allocate the cost among those responsible.

6.3 Independent Testing

6.3.1 County Testing. The County will employ and pay for services of an independent testing laboratory to perform services specifically required by the governing code authority, as detailed in the Specification, and as additionally requested by County.

6.3.2 Contractor Duties. The Contractor shall:

- (1) Notify the County and the testing laboratory sufficiently in advance of the required test to allow for its assignment of personnel and scheduling of tests;
- (2) Cooperate with testing and inspection personnel provide access to the Work and to offsite fabrication facilities;
- (3) Furnish copies and records of mill test reports;
- (4) Employ and pay for services of the same independent testing laboratory to perform additional inspections, sampling, and testing required when initial tests indicate Work does not comply with Contract requirements;
- (5) Be responsible for all scheduling of inspections and tests; and
- (6) Not proceed with Work requiring inspection if the appropriate inspector is absent.

6.3.3 Material testing. All material testing which conforms to or meets specified standards in the following categories shall be paid for by the County. Material tests in the following categories which fail to meet specified standard shall be paid for by the Contractor:

- (1) Soil density tests
- (2) Concrete compression tests
- (3) Grout compression tests
- (4) Mortar compression tests
- (5) Testing of masonry units
- (6) Testing of reinforcing steel
- (7) Structural steel
- (8) Anchors and fasteners

Unless stated otherwise in the Contract Documents, any other required or specified tests shall be paid by the Contractor and shall be performed by a qualified testing laboratory approved by the County.

7 CHANGES IN THE WORK

7.1 General

7.1.1 County's Right to Order Changes. The County, without invalidating the Contract, may authorize changes in the Work consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly, if necessary. All such changes in the Work shall be authorized by Change Order, Construction Change Directive, or Written Amendment to Contract, and Contractor shall perform such changes in the Work according to the applicable requirements of the Contract Documents. The County is not required to provide notice to Contractor's sureties of Change Orders, Contract Change Directives or Written Amendment to Contract.

7.1.2 Basis for Agreement. A Change Order or Written Amendment to Contract shall be based upon agreement between the County and Contractor. A Construction Change Directive may or may not be agreed to by the Contractor.

7.1.3 No Estoppel. Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with the change, unless otherwise provided in the Change Order, Construction Change Directive, or Written Amendment to Contract. A change in the Contract Sum or the Contract Time shall be accomplished only by Change Order, Construction Change Directive, or Written Amendment to Contract. Accordingly, no course of conduct or dealings between the Parties, nor express or implied acceptance of alterations or additions to the Work and no Claim that the Contract has been abandoned or the County has been unjustly enriched by any alteration or addition to the Work shall be the basis of any Claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

7.1.4 Change in Work. The County may at any time make any change, modification or addition to the Work by written Change Order, Construction Change Directive, or Written Amendment to Contract, including but not limited to changes:

- (1) in the Specifications or Drawings;
- (2) in the sequence, method or manner of performance of the Work;
- (3) in the County furnished facilities, equipment, materials, services or Site; or
- (4) directing acceleration in the performance of the Work.

7.2 Change Orders

7.2.1 Computation. Methods used in determining adjustments to the Contract Sum by Change Order or Written Amendment to Contract may include those listed in Paragraph 7.4 below.

7.2.2 Accord and Satisfaction. Agreement on any Change Order or Written Amendment to Contract shall be a full compromise and settlement of all adjustments to

Contract Time and Contract Sum, and compensation for any and all delay, extended or additional field and home office overhead, disruption, acceleration, inefficiencies, lost labor or equipment productivity, differing site conditions, construction interferences and other extraordinary or consequential damages (hereinafter called "Impacts"), including any ripple or cumulative effect of said Impacts on the overall Work under the Contract arising directly or indirectly from the performance of Work described in the Change Order or Written Amendment to Contract. By execution of any Change Order or Written Amendment to Contract, Contractor agrees that the Change Order or Written Amendment to Contract constitutes a complete accord and satisfaction with respect to all claims for schedule extension, Impacts, or any costs of whatsoever nature, character or kind arising out of or incidental to the Change Order or Written Amendment to Contract. No action, conduct, omission, product failure or course of dealing by the County shall act to waive, modify, change, or alter the requirement that (i) Change Orders, Construction Change Directive, or Written Amendment to Contract must be in writing, signed by the County and Contractor and; (ii) that such written Change Orders, Construction Change Directives, or Written Amendment to Contract are the exclusive method for effectuating any change to the Contract Sum and/or Contract Time.

7.3 Construction Change Directives

7.3.1 Use. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.2 Duty to Proceed. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the Work involved and advise the County of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.3 Disagreement. If the Contractor does not promptly indicate its disagreement with the method of pricing provided in the Construction Change Directive, Contractor shall be deemed to agree with the method of pricing the change. If the Contractor indicates its disagreement with the method of pricing or if no method of pricing is provided in the Construction Change Directive, the increase in cost or credit to the Contract Sum for the change shall be determined by cost in accordance with Subparagraph 7.4.1(3) and the provisions of Subparagraphs 7.4.2, 7.4.3 and 7.4.4 shall apply to the change.

7.3.4 Agreement. A Construction Change Directive is effective immediately whether or not it is signed by the Contractor. If the Contractor signs a Construction Change Directive such agreement shall be effective immediately and shall be recorded as a Change Order.

7.4 Computation of Cost or Credit for Changes

7.4.1 Cost or Credit. The cost or credit to the County resulting from a change in the Work shall be determined by County by one or more of the following methods:

- (1)** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (2)** Unit prices stated in the Contract Documents or subsequently agreed upon;
- (3)** By cost, as defined in (a), (b), (c) and (d) below, properly itemized and supported by sufficient substantiating data to permit evaluation, plus agreed to markup for overhead and profit as defined in (e) below. Such costs shall be itemized by craft directly allocable to the change in the Work:
- (a)** Cost of materials, including cost of transportation and delivery;
 - (b)** Cost of labor, including social security, and unemployment insurance, and fringe benefits required by agreement and Workers' Compensation insurance;
 - (c)** Rental value of equipment and machinery, exclusive of hand tools;
 - (d)** Sales tax; insurance; permit costs and bond premiums;
 - (e)** Mark-up to Contractor, Subcontractors, and Sub-subcontractor for overhead, profit and other expenses which are not specifically included in (a) through (d) above shall not exceed the following amounts:
 - (i)** Fifteen (15%) of the cost of that portion of the Extra Work to be performed by the Contractor with its own forces.
 - (ii)** Fifteen percent (15%) of the cost of that portion of the Work to be performed by a Subcontractor or Sub-subcontractor with its own forces, plus 5% for the Contractor. Total combined Contractor, Subcontractor, and Sub-subcontractor fee shall not exceed 20%.
 - (f)** Cost of Extra Work shall not include any of the following:
 - (i)** Superintendent(s)
 - (ii)** Assistant Superintendent(s)
 - (iii)** Project Engineer(s)
 - (iv)** Project Manager(s)
 - (v)** Scheduler(s)
 - (vi)** Estimator(s)

- (vii) Incidental Drafting or Detailing
- (viii) Small tools (Replacement value does not exceed \$300)
- (ix) Office expenses including staff, materials and supplies
- (x) On-Site or off-site trailer and storage rental and expenses
- (xi) Site fencing
- (xii) Utilities including gas, electric, sewer, water, telephone, facsimile, copier equipment
- (xiii) Data processing personnel and equipment
- (xiv) Federal, state, or local business income and franchise taxes

7.4.2 Credits. The amount of credit to be allowed by the Contractor to the County for a deletion or change, which results in a net decrease in the Contract Sum, shall be actual net cost as determined herein. The amount of deduct/credit for liquidated damages shall be in accordance with the Agreement. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase/decrease, if any, with respect to that change.

7.4.3 Contractor Maintenance of Records. In the event that Contractor is directed to perform any changes to the Work, or should Contractor encounter conditions which the Contractor believes would obligate the County to adjust the Contract Sum and/or the Contract Time, Contractor shall maintain detailed records of the cost of such changes on a daily basis. Such records shall include without limitation hourly records for labor and construction equipment and itemized records of materials and equipment used each day in connection with the performance of any change to the Work. In the event that more than one change to the Work is performed by the Contractor in a calendar day, Contractor shall maintain separate records of labor, construction equipment, materials, and equipment for each such change. In the event that any Subcontractor or Sub-subcontractor, of any tier, shall provide or perform any portion of any change to the Work, Contractor shall require that each such Subcontractor and Sub-subcontractor maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by Contractor's Project Representative; such signature shall be deemed Contractor's representation and warranty that all information contained therein is true, accurate, complete, and relates only to the change referenced therein. All records maintained by a Subcontractor and Sub-subcontractor, of any tier, relating to the costs of a change in the Work shall be signed by such Subcontractor's authorized Project Manager or Superintendent. Such records shall be forwarded to County's Project Manager on the day the Work is performed (same day) for independent verification. In the event that Contractor shall fail or refuse, for any reason, to maintain or make available for inspection, review, and/or reproduction such records, adjustments to the Contract Sum or Contract Time, if any, on account of any change to the Work

shall be determined by County which shall be binding upon Contractor. Contractor's obligation to maintain records hereunder is in addition to, and not in lieu of, any other Contractor obligation under the Contract Documents with respect to changes to the Work.

7.4.4 Payment of Undisputed Amounts. Pending final determination of the total cost of a Change, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by an approved Change Order, Construction Change Directive or Written Amendment to Contract, indicating the Parties' agreement with part or all of such costs.

7.5 Authority to Approve Changes

7.5.1 County's Project Manager's Authority. The County's Project Manager must authorize any change in the Work. Such changes shall be effected by written order approved by the Director or San Bernardino County Board of Supervisors and shall be binding on the Contractor.

7.5.2 Verbal Changes. Any oral order, direction, instruction, interpretation, or determination from the County (collectively "Verbal Change") which, in the opinion of the Contractor, causes a Scope Change in the Work, or otherwise requires an adjustment to the Contract Sum or the Contract Time, shall be treated as a Change Order Request only if the Contractor gives the County written notice within ten (10) calendar days of the Verbal Change and prior to acting in accordance therewith. Time is of the essence in Contractor's written notice pursuant to the preceding sentence, so that the County can promptly investigate and consider alternative measures to address the Verbal Change giving rise to Contractor's notice. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice within ten (10) calendar days of such Verbal Change shall be deemed Contractor's waiver of any right to assert or Claim any entitlement to an adjustment of the Contract Time or the Contract Sum on account of such Verbal Change. The written notice shall state the date, circumstances, extent of adjustment to the Contract Sum or the Contract Time, if any, requested and the source of the Verbal Change. Any such Verbal Change shall not be treated as a change and the Contractor hereby waives any Claim for any adjustment to the Contract Sum or the Contract Time on account thereof.

7.5.3 Unauthorized Work. Any Work performed by the Contractor not indicated on the Contract Documents or any changes in the Work performed or provided by the Contractor without notice to the County and written approval by County, shall be considered unauthorized by the County and performed at the sole expense of the Contractor. Unauthorized work so performed will not be measured or paid for and no extension of Contract Time will be granted on account thereof. Any such unauthorized work may be ordered removed at the Contractor's sole cost and expense. The failure of the County to direct or order removal of such unauthorized work shall not constitute acceptance or approval of such work nor relieve the Contractor from any liability on account thereof.

7.6 County Originated Proposal Request

County may issue a request, in writing, to Contractor, describing a proposed change to the Work and requesting the Contractor submit an itemized proposal in a format acceptable to County within ten (10) calendar days after County issues the request. The Contractor's proposal shall include an analysis of impacts to Contract Sum and Contract Time, if any, to perform additional work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs (broken down by the cost categories listed in the Agreement and/or Paragraph 7.4 herein), and Contractor's proposed methods to minimize costs, delay, and disruption to the performance of the Work. If Contractor fails to submit a written proposal within such period of time, it shall be presumed that the change described in the County's original proposal request will not result in an increase to the Contract Sum or Contract Time and the change shall be performed by Contractor without additional compensation. County's proposal request does not authorize the Contractor to commence performance of the change, unless otherwise specified in writing. If County desires that the proposed change be performed, the Work shall be authorized according to the Change Order or Construction Change Directive procedures set forth above.

7.7 Contractor Originated Change Order Request (COR)

If the Contractor alleges that instructions issued by the County after the effective date of the Contract may result in changes to the Contract Sum or Contract Time or if the Contractor otherwise becomes aware of the need for or desirability of a change in the Work, Contractor may submit a written Change Order Request ("COR") to the County in writing, in a format acceptable to County and in accordance with the notice provisions and other requirements of Paragraph 4.3 above for Claims. The COR must specify the reasons for the proposed change, cost impacts and relevant circumstances and impacts on the Construction Schedule. The document shall be complete in its description of the Work, its material and labor quantities and detail, and must support and justify the Costs and credits claimed by the Contractor. A CPM schedule fragnet is required to support and justify any additional Contract Time of performance requested by the Contractor. The County will not review any COR which is incomplete. The Contractor may request additional compensation and/or time through a COR but not for instances that occurred more than ten (10) calendar days prior to the notice date. Contractor's failure to initiate a COR within this ten-day period or to provide detailed back-up documentation to substantiate the COR within thirty (30) calendar days of the initial written notice shall be deemed a waiver of the right to adjustment of the Contract Sum or the Contract Time for the alleged change. Any COR that is approved by the County will be incorporated in a Change Order, Construction Change Directive or Written Amendment to Contract. If the COR is denied by the County, the Contractor shall not proceed with the Work described in the COR.

7.8 Audit Rights

With respect to any Change Order, Construction Change Directive or Written Amendment to Contract resulting in an increase in the Contract Sum, the Contractor shall afford (and shall require its Subcontractors to afford) access to the County at all reasonable times to any books, correspondence, instructions, receipts, vouchers, memoranda and records of any kind relating thereto, all of which shall be maintained by the appropriate parties for a period of at least five

(5) years from and after the date the County makes payment on account of such Change Order, Construction Change Directive or Written Amendment to Contract. The Contractor authorizes the County (and shall requires its Subcontractors to authorize the County) to check directly with any suppliers of labor and material with respect to any item chargeable to the County, to confirm balances due and to obtain sworn statements and waiver of liens, all if the County so elects.

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8 SCHEDULE AND EXTENSIONS OF TIME

8.1 Definitions

8.1.1 Contract Time. The Contract Time is the period of time allocated in the Contract Documents from the date of commencement provided in County's Notice to Proceed for Final Completion of the Work.

8.1.2 Commencement. The Date of Commencement of the Work is the date provided in County's Notice to Proceed.

8.1.3 Substantial Completion. The date of Substantial Completion is the date determined by County and certified by the County in accordance with Paragraph 9.6 below and the terms of this Agreement.

8.2 Progress and Completion

8.2.1 Time is of the Essence. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement and any Modifications relating to Substantial Completion or Contract Time the Contractor agrees and confirms that the Contract Time is a reasonable period for performing the Work and that Contractor is able to complete the Work by that date.

8.2.2 Commencement. The Contractor shall not knowingly prematurely commence operations on the Site or elsewhere prior to the effective date of insurance and bonds required to be furnished by the Contractor to County as specified in the Agreement. The Date of Commencement of the Work shall not be changed by the effective date of such insurance and bonds.

8.2.3 Completion. The Contractor shall proceed expeditiously with adequate labor and supervision to achieve Final Completion within the Contract Time.

8.2.4 Notice to Proceed. The Contract shall commence the Work required by this Contract within ten (10) calendar days of the date specified in the notice from the County to proceed with the Work.

8.2.5 Expeditious Work. Contractor shall proceed expeditiously with adequate forces and shall complete the Work by the date specified in the Contract Documents. If Contractor is not diligently proceeding with the prosecution of the Work as scheduled, Contractor shall, immediately and at no additional cost to the County, take measures necessary, including working such overtime, and additional shifts as may be required to correct such delays.

8.3 Contractor's Schedules

8.3.1 Project Schedule. Unless otherwise provided in the Agreement or Technical Specifications, within fourteen (14) calendar days after the Date of Commencement,

Contractor shall submit a baseline Project Schedule for the Work for comment and approval by County. The baseline Project Schedule shall include, but not be limited to:

- (1) A CPM format that incorporates all activities with descriptions, sequence, logic relationships, duration estimates, resource-loading, and other information required for all pre-construction and construction activities.
- (2) Activities to be integrated and shown in the CPM network shall include all milestones representing the Contractor's submittal dates and activities representing the County's review period of each submittal (which review period shall in no case be scheduled for less than 15 working days); Contractor's procurement of materials and equipment; submittals; manufacture and/or fabrication, testing and delivery to the jobsite of special material and major equipment; equipment installation and preliminary, final and performance testing of equipment or systems.
- (3) Activities showing the start and finish dates for all temporary works; all construction of mock-ups, and prototypes and/or samples.
- (4) Activities showing start and finish dates of owner-furnished items and interface requirements dates with other contractors; regulatory agency approvals; and permits required for the performance of the work.
- (5) Activities showing start and finish of tenant programming (as appropriate), modular furniture, tenant improvement work and phased occupancy.
- (6) Close-out activities.
- (7) The schedule shall consider all foreseeable factors or risks affecting or which may affect the performance of the work, including historical and predicted weather conditions, Applicable Laws, regulations or collective bargaining agreements pertaining to labor, transportation, traffic, air quality, noise and any other applicable regulatory requirements.
- (8) The Contractor shall attach a narrative report which explains assumptions used for activity durations, its assumptions regarding crew sizes, equipment requirements and production rates, any potential areas of concern or specific areas requiring coordination it may have identified and any long-lead time materials or equipment.
- (9) Time units for all schedules shall be in calendar days, and no construction activity shall have a duration greater than 30 calendar days without County approval.

Upon the County's approval, the Project Schedule shall be deemed to be a Contract Document. Any revisions or updates to the Project Schedule are subject to review and approval by County.

8.3.1.1 The County's review of the form and general content of the baseline Project Schedule is for the purpose of determining, in its judgment, whether the following requirements are satisfied:

- (1) Schedules are suitable for monitoring progress of the Work;
- (2) Schedules provide necessary data about the timing of the County's decisions on the County furnished items, including furniture, equipment and occupancy;
- (3) Schedules are in sufficient detail to demonstrate adequate planning for the Work; and
- (4) Schedules represent a practical plan to complete the Work within the Contract Time.

8.3.1.2 Contractor shall plan, develop, supervise, control, and coordinate the performance of the Work so that the progress and the sequence and timing of Work activities conform to the current accepted Project Schedule. Contractor shall continuously obtain from Subcontractors information and dates about the planning for and progress of the Work, the ordering and fabrication of materials, required Submittals, and the delivery of equipment, shall coordinate and integrate such information and data into updated Project Schedules and "As-Built" Drawings and specifications, and shall monitor the progress of the Work and the delivery of equipment. Contractor shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier. Contractor shall cooperate with the County in the development of the Project Schedule and updated Project Schedules.

8.3.1.3 The County's acceptance of or its review comments about any Project Schedule or scheduling data shall not relieve Contractor from its sole responsibility to plan for, perform, and complete the Work by the Contract Time. Acceptance of or review comments about any Project Schedule shall not transfer responsibility for any Project Schedule to the County nor imply their agreement with (1) any assumption upon which such schedule is based on or (2) any matter underlying or contained in such schedule.

8.3.1.4 Failure of the County to discover errors or omissions in schedules that it has reviewed, or to inform Contractor that Contractor, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Project Schedule shall not relieve Contractor from its sole responsibility to perform and complete the Work by the Contract Time and shall not be a cause for an adjustment of Contract Time or the Contract Sum.

8.3.2 Format. Unless otherwise provided in the Agreement or Technical Specifications, the Project Schedule shall be in a detailed precedence CPM or Microsoft type format satisfactory to the County, which shall also: (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and maintenance; and (iii) set forth dates

that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as Milestone Dates). At a minimum the Project Schedule shall depict the schedule for Work on a discipline by discipline and trade by trade basis and tasks within each discipline and trade. The Project Schedule shall include: (i) proposed activity sequences and durations; (ii) Milestone Dates for receipt and approval of pertinent information, including County-supplied information and approvals by public authorities having jurisdiction over the Project; (iii) dates for preparation and processing of Shop Drawings, Product Data, and Samples; (iv) dates for delivery of materials or equipment requiring long-lead time procurement; (v) County's occupancy/use requirements showing portions of the Project having occupancy priority; (vi) the estimated date of Substantial Completion and Final Completion; and (vii) other information reasonably required by County. Upon review and acceptance by the County of the baseline Project Schedule, the baseline Project Schedule shall be deemed part of the Contract Documents. If not accepted, the baseline Project Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the County and re-submitted for acceptance.

8.3.3 Updates. With each Application for Payment submitted by Contractor (other than the Final Application for Payment), the Contractor shall submit to the County an updated Project Schedule revised to include, at a minimum:

8.3.3.1 Monthly update/status of electronic database shall include recording of all Actual Start Dates and Actual Finish Dates and status of activities in progress.

8.3.3.2 Review of "planned" versus "actual" work force allocations and progress for the preceding month.

8.3.3.3 Reviews of revisions, added or deleted work and how those activities are being integrated into the Contractor's work plan.

8.3.3.4 Review of the Contractor's interface and coordination with other work on the Project.

8.3.3.5 Review of all impacts to the Work during the preceding month and to date, Contractor evaluation of those impacts and any recovery plans or remedial actions required to comply with the contract schedule.

If the Contractor does not submit an updated Project Schedule with an Application for Payment, County may withhold payment, in whole or in part. In the event any update to the Project Schedule indicates any delays to the Contract Time that are the fault of Contractor or others for whom Contractor is responsible, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any Project Schedule Update constitute an adjustment in the Contract Time, any deadline, or the Contract Sum unless any such adjustment is agreed to by the County and authorized pursuant to Change Order, Construction Change Directive, or Written Amendment to Contract.

8.3.4 Extraordinary Measures. In the event the County determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the County shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, the Extraordinary Measures as provided in Paragraph 2.8 herein.

8.3.5 Early Completion. While the Contractor may schedule completion of the Project earlier than the date established by the Contract Documents, no additional compensation shall become due the Contractor for the use of float time between the Contractor's projected early completion date and the date for Final Completion established by the Contract Documents except any bonus or penalty provisions set forth in the Contract Documents, which would take precedence over and supersede this Paragraph.

8.3.6 Schedule of Submittals. Unless otherwise provided in the Agreement or Technical Specifications, within ten (10) calendar days after the Date of Commencement, the Contractor shall prepare and keep current, for the County's review and approval, a Schedule of Submittals for Shop Drawings, Product Data, Samples, and similar submittals, coordinated with the baseline Project Schedule and allowing the County reasonable time to review. Contractor shall be solely responsible for any delay, disruption, impact, loss of efficiency or other loss, arising directly or indirectly from Contractor's failure to manage submittals properly.

8.3.7 Procurement Schedule. Unless otherwise provided in the Agreement or Technical Specifications, within ten (10) calendar days after the Date of Commencement, Contractor shall prepare and keep current, for County's approval, a schedule for procurement of materials and equipment which is coordinated with the baseline Project Schedule and allows the County reasonable time to review. Contractor is solely responsible for any delay, disruption, impact, loss of efficiency, or other loss arising directly or indirectly from Contractor's failure to properly manage procurement of equipment and materials.

8.3.8 Performance. The Contractor shall perform the Work in accordance with the most recent Project Schedule and Schedule of Submittals approved by the County. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Project Schedule and shall promptly advise the County of any delays or potential delays.

8.4 Delays and Extensions of Time

8.4.1 Non-Compensable Force Majeure Events.

8.4.1.1 Definition. "Force Majeure" shall mean any of the following events, which materially and adversely affect Contractor's obligations hereunder and which event could not have been avoided or prevented by due diligence and use of reasonable efforts by Contractor: earthquake, fire, flood, epidemic, blockade, rebellion, war,

terrorism, riot, act of sabotage, or civil commotion; discovery of any archaeological, paleontological or cultural resources; spill of hazardous substances by a third party at or near the Site which is required to be reported to the Federal or California Environmental Protection Agency, Toxic Substances Control; or discovery at, near, or on the Site of any species listed as "threatened" or "endangered" under the Federal or California Endangered Species Act.

8.4.1.2 Remedies. If the critical path of the Work is delayed by Force Majeure events, provided that the aforesaid causes were not foreseeable and did not result from the acts of the Contractor, and provided further that the Contractor has taken reasonable precautions to prevent further delays owing to such causes, then the Contractor may pursue remedies for adjustment of the Contract Time in accordance with Paragraph 4.3 above. Unless the Force Majeure event damages the Work at the Project Site, Contractor will not be entitled to an adjustment in the Contract Sum.

8.4.1.3 Rain Days/Inclement Weather. For purposes of granting time extensions pursuant to this subparagraph and in accordance with the Claims procedures set forth in Paragraph 4.3 herein, resulting from unworkable days due to rain/inclement weather which were not reasonably foreseeable, the Contractor and County agree that the impact of rainfall/inclement weather for which the Contractor is not entitled to a time extension is a total of ten (10) Work Days per year ("Rain Days"). The Contractor shall account for the above number of Work Days for which the effects of rainfall/inclement weather are expected to prevent Work in the Project Schedule as set forth in Subparagraph 8.3 herein and shall obtain County's approval of Contractor's use of each Rain Day before requesting extension of the Contract Time.

8.4.2 Compensable County-Caused Delays. If the date for Final Completion of the Work is delayed as a result of the wrongful acts or negligence of the County or anyone for whom County is legally liable and the delays are unforeseeable and are unreasonable under the circumstances involved, the Contractor shall be entitled to an equitable adjustment of the Contract Time and/or compensation for reasonable additional costs directly resulting from such delays, but not for any additional home office overhead, profit or fee, subject to the requirements of Article 8 herein, and further provided Contractor complies with the notice and procedural requirements of Articles 4 and 7 herein.

8.4.3 Concurrent Delays. To the extent the Contractor is entitled to an extension of Contract Time due to an excusable delay, but the performance of the critical path of the Work would have been otherwise suspended, delayed, or interrupted by the fault or neglect of the Contractor or by an inexcusable delay, the Contractor shall not be entitled to any additional cost during the period of such concurrent delay.

8.4.4 Float. Critical Work activities are defined as Work activities which, if delayed or extended, will delay the scheduled completion of the milestones and/or time of completion. All other Work activities are defined as non-critical Work activities and are considered to have float. Float is defined as the time that a non-critical Work activity can be delayed or extended without delaying the scheduled completion of the

milestones and/or time of completion. Float is considered a Project resource available to either party or both parties as needed. Once identified, Contractor shall monitor, account for, and maintain float in accordance with Critical Path Methodology.

Delays of any non-critical Work shall not be the basis for an extension of Contract Time until the delays consume all float associated with that non-critical Work activity and cause the Work activity to become critical.

It is acknowledged that County-caused time savings (i.e., critical path submittal reviews returned in less time than allowed by the Contract Documents, approval of substitution requests which result in a savings of time for Contractor, etc.) create shared float. Accordingly, County-caused delays may be offset by County-caused time savings.

8.4.5 Shortage of Material. An extension of time will not be granted by the County for a delay caused by a shortage of materials, except County-furnished materials, unless the Contractor furnishes to the County documented proof that the Contractor has made every effort to obtain such materials from every known source within reasonable reach of the Work. The Contractor shall also submit proof, in the form of network analysis data that the inability to obtain such materials when originally planned did, in fact, cause a delay in Final Completion of the Work which could not be compensated for by revising the sequence of operations. County will consider only the physical shortage of material as a cause for extension of time. The County will not consider any claim that material could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of the County that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities and that such fact could not have been known or anticipated at the time the Contract was entered into.

8.4.6 Utility and Agency Delays. Contractor is aware that governmental agencies, gas companies, electrical utility companies, water districts, and other utilities and agencies may be required to approve a proposed installation. Contractor has endeavored and will continue to use its best efforts to include the cost of such anticipated delays and related costs which may be caused by such utilities and agencies in the Contract Sum. Thus, Contractor is not entitled to make claim upon the County for damages or delays arising from the delays caused by such utilities and agencies. Furthermore, the Contractor has included time periods for such governmental approval in the Project Schedule and is not entitled to an extension of time for delays caused by governmental agencies from which Contractor must obtain approvals.

8.4.7 Contractor Fault. No extension of time will be granted under this Article 8 for any delay to the extent: (i) that performance was so delayed by any Contractor induced causes, including but not limited to the fault or negligence of the Contractor or its Subcontractors; or (ii) for which any remedies are provided for or excluded by any other provision of the Contract.

8.4.8 Contract Modification. A Change Order, Construction Change Directive, or Written Amendment to Contract will be issued by the County to the Contractor within a reasonable period of time after approval of a request for extension of time, specifying the number of days allowed, if any, and the new date or number of calendar days after the date of commencement for completion of the Work or specified portions of the Work.

8.4.9 No Release of Surety. An extension of time granted shall not release the Contractor's surety from its obligations. Work shall continue and be carried on in accordance with all the provisions of the Contract and said Contract shall be and shall remain in full force and effect during the continuance and until the completion and Final Acceptance of the Work covered by the Contract unless formally suspended or annulled in accordance with the terms of the Contract.

8.4.10 No Waiver. Neither the grant of an extension of time beyond the date fixed for Final Completion of the Work, nor the performance and acceptance of any part of the Work or materials specified by the Contract after the time specified for Final Completion of the Work, shall be deemed to be a grant of any future extensions, a waiver by the County of the County's right to abrogate this Contract for abandonment or failure to complete within the time specified, or to impose and deduct damages as may be provided in the Contract Documents.

8.5 Liquidated Damages

8.5.1 County and Contractor recognize that time is of the essence in this Agreement and that the County may suffer financial loss in the form of lost grant funds, additional contract administration expenses, and loss of public use if the Work is not completed within the Contract Time, including any extensions thereof allowed in accordance with the Contract Documents.

8.5.2 Contractor and County agree to liquidate damages with respect to Contractor's failure to achieve Final Completion of the Work within the Contract Time. The Parties intend for the liquidated damages set forth herein to apply to this Contract as set forth in Government Code Section 53069.85. Contractor acknowledges and agrees that the liquidated damages are intended to compensate County solely for Contractor's failure to meet the deadline for Final Completion and shall not excuse Contractor from liability from any other breach, including any failure of the Work to conform to the requirements of the Contract Documents.

8.5.3 In the event that Contractor fails to achieve Final Completion of the Work within the Contract Time, Contractor agrees to pay County the amount per day designated in the Contract and/or Special Conditions for liquidated damages for each calendar day that Final Completion is delayed.

8.5.4 Contractor acknowledges and agrees that the foregoing liquidated damages have been set based on an evaluation by County of damages that it will incur in the event of the late completion of the Work. Contractor and County agree that because of the nature of the Project it would be impractical or extremely difficult to fix the amount of

actual damages incurred by the County due to a delay in completion of the Work. Accordingly, the County and Contractor have agreed to such liquidated damages to fix Contractor's costs and to avoid later disputes. It is understood and agreed by Contractor that any liquidated damages payable pursuant to this Agreement are not a penalty and that such amounts are not manifestly unreasonable under the circumstances existing as of the effective date of this Agreement.

8.5.5 It is further mutually agreed that County shall have the right to deduct liquidated damages against progress payments or retainage and that the County will issue a unilateral Construction Change Directive and reduce the Contract Sum accordingly. In the event the remaining unpaid Contract Sum is insufficient to cover the full amount of liquidated damages, Contractor shall pay the difference to County.

9 PAYMENTS AND COMPLETION

9.1 Contract Sum

The Contract Sum, including authorized adjustments, is the total maximum amount payable by the County to the Contractor for performance of the Work under the Contract Documents.

9.2 Schedule of Values

Within fourteen (14) calendar days after the Date of Commencement, Contractor shall submit to the County a Schedule of Values allocated to various portions of the Work. The Schedule of Values shall be approved by the County in writing. The Schedule of Values shall be prepared in such a manner that each major item of Work assigned to Contractor and to each separate Subcontractor is shown as a single line item on AIA Document G703 (or other form as required by County) and supported by such data to substantiate its accuracy as the County may require. The approved Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 Applications for Payment

9.3.1 Applications for Payment. The Contractor shall submit to the County an itemized Application for Payment, utilizing a form approved in writing by the County, for operations completed in accordance with the Schedule of Values and the payment provisions of the Agreement. Such Application shall be notarized, if required by County, and supported by such data substantiating the Contractor's right to payment as the County may require, including copies of requisitions from Subcontractors and Suppliers.

9.3.1.1 Payment will be made on valuation of Work done as of the twenty-fifth of each month, and such application shall be submitted approximately five (5) days before the end of the month.

9.3.1.2 No payments made to the Contractor, nor partial or entire use or occupancy of the Work by the County, shall be acceptance of any Work or materials not in accordance with the Contract Documents.

9.3.2 Based on California Public Contract Code Section 20104.50 and the Contract Documents, each Application for Payment shall be reviewed by the County as soon as practicable after receipt for the purpose of determining that the payment request is proper. Any Application for Payment determined not to be suitable for payment shall be returned to Contractor not later than seven (7) calendar days after receipt. Any returned Application for Payment shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper. The County shall make any progress payment within 30 days after receipt of an undisputed and properly submitted Application for Payment from the Contractor.

9.3.2.1 Such Applications for Payment shall not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason, or as to which an appropriate conditional or unconditional waiver and release of rights upon payment has not been provided.

9.3.3 Documentation. As a condition precedent to County's monthly progress payment to Contractor, Contractor shall submit with each Application for Payment the following documentation:

- (1) Updated Schedules of Values, invoices and requisitions from all Subcontractors, Sub-subcontractors and suppliers performing Work covered by the Application for Payment;
- (2) Completed and executed form of conditional waiver and release of rights upon progress payment in accordance with California Civil Code Section 8132, from Contractor and its Subcontractors covering the amount of the current Application for Payment;
- (3) Completed and executed forms of unconditional waiver and release of rights upon progress payment in accordance with California Civil Code Section 8134, from Contractor and its Subcontractors covering the amount of the previous Application for Payment (but no later than two months prior to the current Application for Payment);
- (4) Reserved.
- (5) At its sole discretion, the County reserves the right to request (i) an executed subcontract including bonds, insurance, certificates, and endorsements and all other exhibits and attachments for each item of material, labor and service for which a disbursement has been requested and (ii) certifications from each Subcontractor and Sub-subcontractor of any tier, that each is current in the payment of any supplemental fringe benefits required pursuant to any collective bargaining agreement to which any such Subcontractor or Sub-subcontractor is a Party or is otherwise bound; and
- (6) Such other documentation as the County may reasonably request.

Any Payment made by County to Contractor in the absence of any of the preceding documents in no way relieves the Contractor from providing all these documents for the current and/or any future payment.

9.3.3.1 As a further condition precedent to County's obligation to make monthly progress payment to Contractor, Contractor must be current in its submittal of documentation required by the Contract Documents including, but not limited to the following:

- (1) A Subcontractor Procurement Log listing executed subcontracts including bonds, insurance, certificates, and endorsements and all other exhibits and attachments for each item of material, labor and service for which a disbursement has been requested;
- (2) Log of all licenses, leases, permits, approvals and agreements relating to the construction of the Project;
- (3) Contractor's daily logs;
- (4) Record Documents and As-Built Drawings and Specifications updated with current Project information as described in Subparagraph 3.10.1 above;
- (5) Updated Project Schedule;
- (6) RFI Log;
- (7) Change Order Request Log and Change Order Log, including a list of any Change Orders and Construction Change Directives, contemplated or under negotiation at the date of such payment request, the status, and a rough order of magnitude cost for each such change.
- (8) Certified Payrolls for the time period covered in the Application for Payment.

Any payment made by County to Contractor in the absence of any of the preceding documents in no way relieves the Contractor from providing all these documents for the current and/or any future payment.

9.3.4 Initial Payment Application. Contractor shall ensure that all administrative actions, submittals, payment procedures and requirements set forth in the Contract Documents for the first Application for Payment must precede or coincide with the initial Application for Payment, including:

- (1) A description of the types of Work and the amounts thereof to be provided by the Contractor (as opposed to the Subcontractors);
- (2) A list of Subcontractors, principal suppliers and fabricators;
- (3) A Submittal Schedule;

- (4) Copies of all necessary permits;
- (5) All insurance certificates and endorsements for Contractor and all Subcontractors are in place;
- (6) Payment and Performance Bonds for Contractor and Subcontractors, as applicable, are in place; and
- (7) Job signs have been installed.

9.3.5 Payment to Subcontractors. Within seven (7) calendar days of Contractor's receipt of payment from County for Work performed by a Subcontractor, the Contractor shall pay all Subcontractors for and on account of Work on the Contract performed by each. The Contractor shall by appropriate agreement with each Subcontractor and Supplier, require each Subcontractor to make payments to Sub-subcontractor in a similar manner. The County will, on request, furnish to a Subcontractor, Sub-subcontractor, or supplier, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the County on account of portions of the Work done by each.

9.3.6 Substantial Completion Payment Application. Following the determination of Substantial Completion by the County's Project Manager and approval thereof by County, the Contractor shall submit an Application for Payment at Substantial Completion. In addition to submittals required for all applications for progress payments, the Contractor shall complete the following administrative actions and submittals, all of which shall precede or coincide with this application:

- (1) List all incomplete items of Work and the value of each item of incomplete Work;
- (2) Obtain and submit all documentation necessary to enable the County's full and unrestricted use of the Work or portions thereof, and access to services and utilities, and to supply any change-over information necessary to the County's occupancy, use, operation, and maintenance;
- (3) Discontinue and remove temporary facilities and services from the Site, along with construction tools and facilities, forms, and similar items except for Contractor's field office;
- (4) Obtain all temporary occupancy permits and similar approvals for the use of the facilities;
- (5) Inspect, test, and adjust performance of every system of facility of the Work to ensure that overall performance is in compliance with terms of the Contract Documents;
- (6) Submit a report of such test results to the County;

- (7) Provide instruction for the County's operating personnel on systems and equipment operational requirements;
- (8) Report performance of completed installations after adjustment that appear unable to comply with the requirements of the Contract Documents; and
- (9) Submit the operating manual(s) for operating and maintaining the building.

9.3.7 Warranty of Title. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the County no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Applications for Payment have been previously issued and payments received from the County shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, stop notices, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, Sub-subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and/or equipment relating to the Work. This provision shall not relieve the Contractor from the responsibility for materials and Work upon which payments have been made, the restoration of damaged Work, or waive the right of the County to require the fulfillment of the terms of the Contract.

9.3.8 Cash Allowance. Whenever the Specifications provide a lump sum amount for specified Work, the Contractor shall include that amount in his bid for the designated Work, and the stated amount shall be deemed to include the full allowance. Any difference in cost to the Contractor from the supplier shall be added to or deducted from the Contract Sum.

9.3.9 Equipment or Materials. If, during the progress of the Work, the Contractor, with the written approval of the County, purchases and stores in an approved manner on the Site any equipment or materials required to complete the Work prior to the normal need of such equipment or materials, Contractor will be paid on the same basis as provided in Paragraph 9.3, except that the value of such materials or equipment shall be claimed as a separate item and so reported until it shall have been incorporated in the Work. County will not pay for the materials or equipment at the time they are ordered and will not pay for materials or equipment until they are delivered to the Site.

9.3.9.1 If required by the County, such payments shall be conditional upon submission by the Contractor of bills of sale, or such procedure as will establish the County Title to such equipment or materials, or otherwise adequately protect the County's interests.

9.3.9.2 Any equipment or materials stored and paid for by the County prior to being incorporated in the Work shall not be used for any other purpose and shall not be removed from the Site.

9.4 Decisions to Withhold Payment

9.4.1 Basis for Decision to Withhold. The County's Project Manager may withhold payment in whole or in part, to the extent reasonably necessary to protect the County. If the County's Project Manager is unable to approve payment in the amount of the Contractor's Application for Payment, the County's Project Manager will notify the Contractor of the reasons for failing to approve the payment. If the Contractor and County's Project Manager cannot agree on a revised amount, the County's Project Manager will promptly issue payment for the amount for which the County's Project Manager is able to make such representations to the County. The County's Project Manager may refuse to make payment or, because of subsequently discovered evidence, the County's Project Manager or the County may nullify the whole or a part of a payment previously issued, to such extent as may be necessary in the County's Project Manager's opinion to protect the County from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.2 and 3.18 or because of:

- (1) Defective work not remedied;
- (2) Third party claims filed or reasonable evidence indicating probable filing of such claims, including stop notices, unless security acceptable to the County is provided by the Contractor;
- (3) Failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials, services or equipment;
- (4) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- (5) Damage to the County or another contractor;
- (6) Reasonable evidence that the Work will not be completed within the Contract Time;
- (7) Persistent failure to carry out the Work in accordance with the Contract Documents;
- (8) Liquidated damages, if any, which accrued as of the date of the Application for Payment;
- (9) Such other sum as the County is entitled to recover from the Contractor; and
- (10) Contractor's failure to timely submit:
 - (a) Daily logs;
 - (b) Certification from County and Contractor that Record Documents and As-Built Drawings and Specifications have been updated with current Project information as described in Paragraph 3.10 above;

- (c) Updated Construction Schedule;
- (d) RFI logs;
- (e) Change Order Log; and
- (f) Certifications from each Subcontractor and Sub-subcontractor of any tier that each is current in the payment of any supplemental fringe benefits required pursuant to any collective bargaining agreement to which any such Subcontractor is a Party or is otherwise bound.

9.4.2 Withhold for Disputes. In the event of a dispute between County and Contractor, the County may withhold from payments an amount not to exceed one hundred fifty percent (150%) of the disputed amount. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.4.3 Withhold for Stop Notice Claims.

9.4.3.1 If at any time there shall be evidence of the existence, whether or not same has been asserted, of any stop notice, or claim arising out of or in connection with the performance or default in performance of this Contract or any subcontract or supply contract entered into by Contractor to perform this Contract, and if the County might become liable for the discharge of or satisfaction of such stop notice or claim, then the County shall have the right to retain out of any payment then due or thereafter to become due, in addition to the amounts set forth above, an amount sufficient to discharge such stop notice or satisfy such claim and to reimburse the County and the Project Manager(s) of the County for all costs and expenses in connection therewith, including attorneys' fees. Further, the County, in its sole discretion, shall have the right to discharge or satisfy such stop notice or claim and pay all costs and expenses in connection therewith if the Contractor does not have such stop notice or claim discharged or satisfied within ten (10) calendar days after receiving notice to remove the stop notice or claim from County or unless some other procedure for discharge or satisfaction of such claim is agreed between County and Contractor. If the amounts retained are insufficient for the aforesaid purposes, or if such stop notice or claim remains undischarged or unsatisfied after all payments have been made to the Contractor, then the Contractor shall refund to the County all monies that may have been paid, or need to be paid, to discharge such stop notice or satisfy such claims, including the costs, expenses, and attorney's fees in connection therewith.

9.4.3.2 The County may release any payments withheld due to a stop notice claim if the Contractor obtains a release bond that is: (i) issued by a surety acceptable to County admitted to issue surety bonds by the California Department of Insurance; (ii) is in form and substance satisfactory to the County; and (ii) is in an amount of not less than 125% of the amount of any stop notice claim.

9.5 Progress Payments

9.5.1 County Payments to Contractor. After the County's Project Manager has issued an authorization for payment, the County, subject to its rights under Paragraph 9.5 herein, shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the County's Project Manager.

9.5.2 Joint Checks or Direct Payments. Neither the County nor County's Project Manager shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. County, however, reserves the right, in its sole discretion for reasonable cause, to make payments to Contractor in the form of checks payable jointly to Contractor and to any of Contractor's Subcontractors or suppliers or, upon notice to Contractor with the opportunity to object, payments directly to Subcontractors and suppliers, in satisfaction of County's obligation to make payments to Contractor.

9.5.3 Payment Not Acceptance of Work. An authorization for payment, a progress payment, or partial or entire use or occupancy of the Project by the County shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.5.4 Retention. From each progress payment, five percent (5%) will be deducted and retained by the County and the remainder, less the amount of all previous payments and less the amounts needed to satisfy outstanding stop notices, will be paid to the Contractor. At no time shall the progress payments be in excess of ninety-five percent (95%) of the percentage of actual work completed plus ninety-five percent (95%) of the value of materials delivered on the ground or stored and under the control of the County.

9.5.5 The Contractor may, at the Contractor's sole cost and expense, substitute securities equivalent to any monies withheld by the County to insure performance under this Contract. Such security shall be deposited with the County or a state or federally chartered bank as escrow agent, who shall pay such monies to the Contractor upon satisfactory completion of the Contract. The Contractor shall be the beneficiary of any security substituted for monies withheld and shall receive any accrued interest thereon. Securities eligible for investment shall include those listed in Government Code Section 16430 or bank or savings and loan certificates of deposit. No such substitution shall be accepted until the Escrow Agreement, Forms of Security and any other document related to said substitution is reviewed and found acceptable by the County, nor unless the Contractor shall have notified the County of its intention to substitute securities for retainage within ten (10) days of the signing of the Agreement.

9.5.6 Payment by Electronic Fund Transfer. Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

9.6 Substantial Completion

9.6.1 Contractor Request for Inspection and Punch List. When the Contractor considers that the Work is substantially complete, the Contractor shall prepare and submit to the County's Project Manager and County a request for such inspection and a comprehensive Punch List of items to be completed or corrected prior to Final Payment. Failure to include an item on such Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.6.2 County Inspection. Upon receipt of the Contractor's Punch List, the County's Project Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the Contractor's Punch List, which is not sufficiently complete in accordance with the Contract Documents so that the County can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before the determination by County of Substantial Completion, complete or correct such item upon notification by County. In such case, the Contractor shall then submit a request for another inspection by County to determine Substantial Completion.

9.6.3 Determination of Substantial Completion. When the Work or designated portion thereof is substantially complete, the County's Project Manager will make a determination of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the County and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall finish all items on the Punch List and as required in the Contract Documents.

9.6.4 County's Acceptance. The determination of Substantial Completion prepared by County's Project Manager shall be submitted to the Contractor. Upon such acceptance and consent of surety, provided the requirements for Substantial Completion Payment set forth in the Agreement are met, the County shall make payment to the Contractor for the cost of undisputed Work in place. The County's payment shall not exceed 95% of the Contract Sum until Final Completion and acceptance by County of the Work. County, however, shall be entitled to withhold retainage equaling 150% of the estimated cost of the following items until Final Completion:

- (1) Punch list items;
- (2) All items necessary to obtain the Final Certificate of Occupancy identified in the Contract Documents as the Work of Contractor;
- (3) As-Built and Record Documents;
- (4) Potential stop notice claims of individuals or entities who have not provided Conditional Waivers and Releases Upon final Payment; and
- (5) Any Claims the County may have against the Contractor.

If the Contractor has not completed all items enumerated above within thirty (30) calendar days after the determination of Substantial Completion, the County shall have the right to demand completion or correction of the items within a 48-hour period. If the Contractor does not commence the requested Work within the 48-hour period or provide County with written notice of a legitimate reason why Contractor is not able to commence the Work within the 48-hour period, the County shall have the unilateral right to complete the Work and deduct the cost of completion of the Work from any money held pending Final Completion.

9.7 Partial Occupancy or Use

9.7.1 County's Rights and Allocation of Responsibility. The County may occupy or use any completed or partially completed portion of the Work at any stage provided such occupancy or use is consented to by the insurer providing builder's risk property insurance to the Project and is not prohibited by the applicable legal requirements. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the County and Contractor have agreed in writing as to the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to County and County's Project Manager as provided under Subparagraph 9.7.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the County and Contractor.

9.7.2 Joint Inspection. Immediately prior to such partial occupancy or use, the County, Contractor and County's Project Manager shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.7.3 No Acceptance. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.7.4 Conditions. The Contractor agrees to County's use and partial occupancy of a portion or unit of the Project before formal acceptance by the County under the following conditions:

- (1) Occupancy by the County shall not be construed by the Contractor as being an acceptance by County of that part of the Project to be occupied;
- (2) Contractor shall not be held responsible for any damage to the occupied part of the Project resulting solely from the County's occupancy;

- (3) Occupancy by the County shall not be deemed to constitute a waiver of existing claims on behalf of the County or Contractor against each other;
- (4) If the Project consists of more than one building, and one of the buildings is to be occupied, the County, prior to occupancy of the building, shall secure permanent property insurance on the building to be occupied and any necessary partial occupancy permits from the governmental agencies in jurisdiction. Final approval and occupancy permits from agencies in jurisdiction are still the responsibility of the Contractor, which may be required for use and occupancy;
- (5) Contractor shall make available in the areas occupied, on a 24-hour day and seven-day week basis if required, any utility services, heating, and cooling as are in condition to be put in operation at the time of early occupancy. All responsibility for the operation and maintenance of said equipment shall remain with the Contractor while it is so operated. However, an itemized list of each piece of equipment so operated, with the date operation commences, shall be made and certified by the County's Project Manager. This list shall be the basis for the commencement of guarantee periods on the equipment being operated for the benefit of the County's early occupancy. The County shall pay for all utility costs and operational expenses which arise out of the occupancy by the County during construction;
- (6) County's use and partial occupancy prior to Project acceptance does not relieve the Contractor of his responsibility to maintain all insurance and bonds required of the Contractor under the Contract until the Project is complete and the Notice of Completion is recorded by the County; and
- (7) If time and/or costs are impacted by County's partial occupancy or use, Contractor may submit a Claim for such financial and/or Schedule impact in accordance with Article 4.

9.8 Final Completion and Final Payment

9.8.1 Inspection. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a Final Application for Payment, the County's Project Manager will promptly make such inspection and, when the County finds the Work acceptable under the Contract Documents and the Contract fully performed, the County's Project Manager will promptly issue a final authorization for payment stating that to the best of the County's Project Manager's knowledge, information and belief, and on the basis of the County's Project Manager's on-site visits and inspections, the Work has been fully and satisfactorily completed in strict compliance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final authorization for payment is due and payable. The County's Project Manager's final authorization for payment will constitute a further representation that conditions listed in Subparagraph 9.8.2 as precedent to the

Contractor's being entitled to Final Payment have been fulfilled. Warranties required by the Contract Documents shall commence on the date of Final Completion of all Work.

9.8.2 Documentation. In addition to the requirements for Final Payment set forth in the other Contract Documents, the Final Payment shall not become due until (i) Contractor has fully performed the Contract, including all Punch List work; (ii) a Final Certificate of Occupancy (or equivalent inspection sign-off) has been issued (unless failure to issue is due to circumstances beyond the control of Contractor); (iii) sixty (60) calendar days have elapsed since County's recordation of a Notice of Completion; and (iii) Contractor has submitted to the County:

- (1) A full, complete and proper Final Application for Payment;
- (2) A current Sworn Statement from the Contractor setting forth all Subcontractors and material suppliers with whom Contractor has subcontracted; the amount of each subcontract; the amount requested for each Subcontractor and supplier in the payment application; the balance remaining on the subcontract; and that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the County or the County's property might be responsible or encumbered (less amounts withheld by County) have been paid or otherwise satisfied;
- (3) A current Sworn Statement from each Subcontractor setting forth all Sub-subcontractors and material suppliers with whom Subcontractor has subcontracted; the amount of each sub-subcontract; the amount requested for each Sub-subcontractor and supplier in the payment application; the balance remaining on the subcontract; and that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the County or the County's property might be responsible or encumbered (less amounts withheld by County) have been paid or otherwise satisfied;
- (4) Completed and executed forms of conditional waiver and release of rights upon final payment in accordance with California Civil Code Section 8136 from Contractor and all persons eligible to record mechanics' liens and file stop notices in connection with the Work, covering the final payment period;
- (5) Completed and executed forms of unconditional waiver and release of rights upon progress payment in accordance with California Civil Code Section 8134 from Contractor and all persons eligible to record mechanics' liens and file stop notices in connection with the Work, covering the previous payment period;
- (6) Completed and executed affidavits from Contractor and Subcontractors, attaching certificates and endorsements evidencing that insurance required by the Contract Documents to remain in force after Final

Payment, if any, is currently in effect and will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the County;

- (7) A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- (8) Consent of surety(ies) to Final Payment;
- (9) Contractor's written assurance that identified corrective work not complete and accepted will be completed by a stated date agreeable to County;
- (10) The required Record Documents and As-Built Construction Documents including, but not limited to, shop drawings and other submittals;
- (11) Reasonable proof that taxes, fees and similar obligations of Contractor have been paid;
- (12) A certificate in form and substance acceptable to County and signed by the County's Project Manager certifying that, to the best of its knowledge, the Work has been completed in accordance with the Contract Documents, all Applicable Laws and restrictions; that the Work, as completed, complies in all material respects with all applicable zoning, environmental, building, and land use laws which apply to the Project; that to the knowledge of the County's Project Manager, no governmental entity has issued any notice of violation or nonconformity in connection with the improvements; that direct connection has been made to all abutting gas, sewer, telephone, and electrical facilities necessary for occupancy and use of the Project; and that the Project is ready for occupancy/use;
- (13) Reserved;
- (14) All warranties from vendors and Subcontractors, maintenance manuals, instructions and related agreements, equipment certifications and similar documents, and maintenance and operating instructions, which shall include:
 - (a) Schematic piping and wiring diagrams;
 - (b) Valve charts and schedules;
 - (c) Electrical panel schedules complete and posted in panels;
 - (d) Lubrication charts and schedules;
 - (e) Guides for troubleshooting;

- (f) Pertinent diagrams of equipment with main parts designated for identification;
 - (g) Manufacturer's data and capacity data on all equipment;
 - (h) Operating and maintenance instructions for all items of equipment and all control systems;
 - (i) Manufacturer's parts list; and
 - (j) Testing procedures for operating tests;
- (15) Tools, spare parts and required extra materials (i.e., attic stock), and similar items;
 - (16) Keys and proof of the final change-over of locks. In addition, Contractor must advise the County's personnel of the change-over in security provisions;
 - (17) Written start-up testing performance reports of all systems after completion of start-up testing, and complete instruction of the County's operating and maintenance personnel;
 - (18) Proof of adherence to final cleaning requirements of the Contract Documents; and
 - (19) Proof of touch up and other repairs and restoration of all marred and exposed finishes.

9.8.3 Release of Stop Notices. If a Subcontractor or supplier refuses to furnish a release or waiver required by County or files a stop notice, the Contractor shall furnish a bond satisfactory to the County to release the stop notice and indemnify the County against such stop notice and County shall enforce its right under Subparagraph 9.4.3 herein.

9.8.4 Delay Not Caused by Contractor. If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting Final Completion, the County shall, upon application by the Contractor and certification by the County, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted provided, however, that the retainage amount held following such payment shall be equal to 150% of the estimated cost of completing the Work as determined by the County. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the County prior to certification of such payment. Such payment shall be made under terms and conditions governing Final Payment.

9.8.5 Contractor's Acceptance of Final Payment. Acceptance of Final Payment by the Contractor, a Subcontractor, or material supplier shall constitute a waiver of any and all Claims by that payee, of whatsoever nature, character or kind, except those previously made in writing and identified by that payee as unsettled at the time of Final Application for Payment.

9.8.6 County's Final Payment. The making of Final Payment shall not constitute a waiver of Claims by the County arising from:

- (1) Unsettled stop notices;
- (2) Faulty or defective work appearing after Substantial Completion of the Work;
- (3) Failure of the Work to comply with the requirements of the Contract Documents;
- (4) Terms of any special warranties required by the Contract Documents; or
- (5) Any other Claim unless specifically waived by the County in writing.

10 PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs

The Contractor is responsible for establishing, maintaining, and supervising the necessary safety precautions needed to permit the performance of the Work without endangering public safety and property. A Site Specific Safety Program and the Contractor's Safety Policy must be prepared and submitted for the County's review and comments. Contractor shall comply with the review comments of County. The Site Specific Safety Program shall include the following:

- (1) The identity of outside safety consultant or Contractor's safety officer and on-site safety officer;
- (2) The schedule for the Contractor's safety inspections;
- (3) The type and frequency of training conducted for Contractor's personnel including tailgate meeting, lifting training, emergency procedure, etc.;
- (4) Information on the types of heavy equipment to be used and the necessary precaution to be taken if there is an accident;
- (5) A copy of the Contractor's Hazardous Communications Program;
- (6) A list of any possible fire hazards and the firefighting equipment for the particular Site;

- (7) A detailed description of hazardous or unusual procedures necessary for the particular Site;
- (8) Information on any material impact of the construction on the surrounding area including traffic flow, parking, street closure, utility shutoffs, and pedestrian crossing;
- (9) Placement, quantity and type of safety warning lights, signs or other devices during construction;
- (10) Written procedures in the event of an injury, fire, hazardous material experience, or other emergency during construction; and
- (11) Description of the location and enclosure of the approved staging area.

Contractor shall also comply with any safety requirements required by insurers providing coverage for the Project. Notwithstanding the foregoing, Contractor specifically assumes all risk of damages or injury to any persons or property, wherever located, resulting from any action or operation of the Contractor or Contractor's Subcontractors or Sub-subcontractors under the Contract Documents or in connection with the Work.

10.2 Safety of Persons and Property

10.2.1 Contractor's Responsibility for Damage or Loss. Except as otherwise provided in the Contract Documents and except as to the cost of repair or restoration of damage to the Work caused by Force Majeure events, the Contractor shall bear all losses resulting to him/her on account of the amount or character of the Work, or from any unforeseen obstructions or difficulties which may be encountered, or from any encumbrances on the line of the Work, or because the nature of the ground in or on which the Work is done is different from what is assumed. The Contractor shall bear the risk for any County equipment, material, or supplies with which Contractor has been entrusted and shall bear responsibility for all bodily injuries to persons, including accidental death, which may be caused by Contractor's performance of the Work.

10.2.2 Contractor's Remedy for Damage or Loss. The Contractor shall promptly remedy all damage or loss to any property referred to in this Article arising, in whole or in part, from the Work performed by the Contractor or by any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and for which the Contractor is responsible, except damage or loss attributable to the acts or omission of the County, or anyone directly or indirectly employed by the County, or by anyone for who the County may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's indemnification obligations under Paragraph 3.18 herein.

10.2.3 Precautions and Protection. The Contractor shall take necessary precautions for the safety of, and shall provide necessary protection to prevent damage, injury or loss to:

- (1) Employees on the Site and other persons who may be affected thereby;
- (2) The Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- (3) Other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

10.2.4 Notice and Compliance with Applicable Law. The Contractor shall give notices and comply with Applicable Laws bearing on safety of persons or property or their protection from damage, injury or loss. Contractor shall comply with all laws and regulations, including the California Labor Code and with all California Occupational Safety and Health Act ("OSHA"), Environmental Protection Agency, and South Coast Air Quality Management District and Mojave Desert Air Quality Management District regulations, concerning safety requirements and protection of workers including, but not limited to, those regulations concerning scaffolding, bracing, shoring, trench excavating and removal, and handling and disposal of hazardous waste. Contractor shall fully defend, indemnify, and hold harmless the County, its members, officers, volunteers, employees, and agents, including, but not limited to, the County's Project Manager, from any and all citations and/or memoranda assessed against the County due to regulatory violations of the Contractor, Contractor's Subcontractors, or Sub-subcontractors.

10.2.5 Safeguards. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgate safety regulations, and notify County and users of adjacent Sites and utilities. The Contractor shall also be responsible for all measures necessary to protect any property adjacent to the Project and improvements thereon. Any damage to adjacent property or improvements shall be promptly repaired or replaced by Contractor at its sole cost and expense within the Contract Sum.

10.2.6 Excavation. As required by Section 6705 of the California Labor Code and in addition thereto, whenever Work under the Contract involves the excavation of any trench or trenches five feet or more in depth, the Contractor shall submit for acceptance by the County or by a registered civil or structural engineer employed by the County, to whom authority to accept has been delegated, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards established by the construction safety orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by the Contractor and all costs therefore shall be included in the price named in the Contract for completion of the Work as set forth in the Contract Documents. Nothing in this section shall be construed to

impose tort liability on the County or any of its officers, agents, officials, volunteers, the Project Managers or employees.

10.2.7 Notice of Hazards. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care, carry on such activities under supervision of properly qualified personnel, and shall provide County and County's Project Manager with reasonable advance notice of such activity.

10.2.8 Loading. The Contractor shall not load or permit any part of the construction or Site to be loaded so as to endanger its safety. The Contractor shall be responsible for the protection of all existing structures and improvements, both above and underground, including both the exterior and interior finishes within the adjoining working areas, and shall provide adequate temporary removal as necessary. Any existing structures or improvements damaged during construction shall be repaired or replaced with materials, workmanship, fixtures, or equipment of the same kind, quality and size as the original, prior to damage. Any materials or equipment temporarily removed and damaged shall be re-erected or installed in a manner approved by the County.

10.2.8.1 The Contractor shall review the structural capability of the construction and Site prior to allowing installation of temporary lifting devices or staging equipment or the temporary off-loading of materials. Contractor shall not exceed design loads without making modifications to the construction or Site to support such loads.

10.2.8.2 All modifications to the construction or Site to support temporary lifting devices, staging equipment, or loading shall be submitted to County for review and acceptance.

10.2.9 Accident Prevention. The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the County.

10.2.10 Accident Reporting. The Contractor shall immediately report all accidents and injuries to County, and shall submit on a form approved by County within 24 hours of such accident or injury setting forth essential information for investigation of the accident or injury including, but not limited to, name, address, and phone number of all injured workers and witnesses, location on the jobsite, nature of injury, medical treatment, identity of ambulance company, and hospital.

10.2.11 Adjoining Property. Contractor shall employ all necessary measures to protect adjoining adjacent property and shall provide barricades, temporary fences, and covered walkways required to protect the safety of passersby, as required by prudent construction practices, local building codes, ordinances, or other laws and the Contract Documents.

10.2.12 Response. Contractor shall immediately respond to notice from the County of unsafe conditions.

10.2.13 Documents Available. Contractor shall have available at the Project Site, copies or suitable extracts of "Construction Safety Orders" and "General Industrial Safety Orders" issued by the State Division of Industrial Safety.

10.3 Hazardous Materials

10.3.1 Notice to County. The Contractor agrees that it is solely responsible for investigation and performing remedial actions on all hazardous materials and other related environmental requirements located on the Project Site. Any hazardous materials that are encountered beyond those described in the Contract Documents may properly be the subject to a Change Order. The County agrees that the Contractor cannot be considered a hazardous materials generator of any such materials in existence on the Site at the time it is given possession of the Site. In the event the Contractor encounters on the Site materials which it reasonably believes to be "hazardous materials" as that term is defined by federal and state law, which have not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the County in writing. The work in the affected area shall not thereafter be resumed until a suitable testing agency certifies the material as nonhazardous or the material is removed or rendered harmless as certified by a suitable testing agency.

10.3.2 Material Safety Data Sheets and Compliance with Proposition 65.

10.3.2.1 Contractor is required to ensure that 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. The Contractor is also required to insure proper labeling on any substance brought into the Project 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.

10.3.2.2 Contractor is required to comply with the provisions of California Health and Safety Code Sections 25249.5 et seq., which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer. The Contractor agrees to familiarize itself with the provisions of this section, and to comply fully with its requirements.

10.4 Contractor Materials

The County shall not be responsible for materials and substances brought to the Site by the Contractor unless such materials or substances were required by the Contract Documents.

10.5 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

10.6 Protection of the Work

10.6.1 Contractor shall protect all materials, equipment, supplies and Work from injury or damage due to heat, storms, rain or wind. If unusually severe weather makes it impossible to continue operations safely in spite of necessary weather precautions, Contractor shall cease Work and notify County of such cessation in accordance with the requirements of Article 4.

10.6.2 Contractor shall not permit open fires on the Project.

10.6.3 Contractor shall take necessary precautions to guard against and eliminate possible fire hazards and to prevent damage to construction Work, building materials, equipment, temporary field offices, storage shed, and public and private property.

10.6.4 If Contractor fails to adequately protect the Work, Contractor is responsible for all damage incurred by County. Contractor is responsible for payment of the deductible on the Builder's Risk Policy, however, County, at its sole discretion, can decide to pay the deductible and deduct such payment from payments then or thereafter due Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such deductible amounts, the Contractor will then pay the different to the County.

10.7 Protection of Existing Property

The Contractor shall be responsible for all measures necessary to protect existing property to remain. This shall include, but is not limited to, padding and draping elevators used in construction, draping of openings and other measures to isolate areas remaining in use, relocation of furniture, fixtures, and equipment, protective covering/draping of furniture, fixtures, and equipment, and protection of landscape materials, planting, and interior and exterior finishes at and adjacent to the Work. Property damaged by the Contractor shall be repaired or replaced by the Contractor to the satisfaction of the County without increase to the Contract Sum. Such measures shall be taken at a frequency required to provide such protection and to keep the areas operational as indicated elsewhere in the Agreement.

11 INSURANCE AND BONDS

11.1 Performance Bond and Payment Bond

11.1.1 Bond Requirements.

11.1.1.1 Contractor shall furnish a Labor and Material Payment Bond and a Performance Bond on the forms provided by the County or on any other form approved by County. Contractor shall deliver to County no later than ten (10)

calendar days after award of the Contract, evidence satisfactory to County that Contractor has obtained the required bonds. The Performance Bond shall be furnished as a guarantee of the faithful performance of the requirements of the Contract Documents in an amount equal to one hundred percent (100%) of the Contract Sum. The Payment Bond shall secure payment of all claims, demands, stop notices, mechanics liens, or charges of material suppliers, mechanics, or laborers employed by the Contractor or by any Subcontractor or any person, firm, or entity eligible to file a stop notice with respect to the Work in an amount equal to one hundred percent (100%) of the Contract Sum. Bonds may be obtained through Contractor's usual source, provided the bonds meet all County requirements, and the cost thereof shall be included in the Contract Sum. In the event of changes in the Work, that increase the Contract Sum, the amount of each bond shall increase and at all times remain equal to the Contract Sum.

11.1.1.2 The bonds shall be executed by a California admitted surety with an A.M. Best's Company rating satisfactory to the County. If an A.M. Best's rating is not available, the proposed surety must meet comparable standards of another rating service satisfactory to County. Bonds issued by a California admitted surety listed in the latest versions of the U.S. Department of Treasury Circular 570 shall be deemed to be accepted unless specifically rejected by County. Bonds from a California admitted surety not listed in Treasury Circular 570 must be accompanied by all of the documents enumerated in California Code of Civil Procedure Section 995.660(a). All bonds must comply with the Bond and Undertaking Law (Code of Civil Procedure Section 995.010 et. seq.).

11.1.1.3 All such bonds shall be accompanied by a power of attorney from the surety company authorizing the person executing the bond to sign on behalf of the company. If the bonds are executed outside the State of California, all copies of the bonds must be countersigned by a California representative of the surety. The signature of the person executing the bond shall be acknowledged by a Notary Public as the signature of the person designated in the power of attorney.

11.1.1.4 If, during the continuance of the Contract, any of the sureties, in the opinion of the County, are or become non-responsible or otherwise unacceptable to County, County may require other new or additional sureties, which the Contractor shall furnish to the satisfaction of County within ten (10) days after notice, and in default thereof the Contract may be suspended and the materials may be purchased or the work completed as provided in Articles 2 and 13 herein.

11.1.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

11.1.3 The Performance Bond shall name the County as the beneficiary under the bond.

11.1.4 In the event of increases in the Contract Sum by Change Orders, or otherwise, the Contractor shall submit to the County evidence of additional bond coverage (both Labor and Material Payment Bond and Performance Bond) for such increases in the Contract Sum. Contractor shall be compensated for such additional bond coverage.

11.1.5 Changes in the Work or extensions of time, made pursuant to the Contract, shall in no way release the Contractor or Surety from their obligations; and the bonds shall remain in full force and effect until one year following the filing of Notice of Completion of the Project by the County. Notice of such changes or extensions shall be waived by the surety.

11.2 Insurance

11.2.1 Contractor shall not commence work under this Contract until all insurance has been obtained that is required under this section and such insurance has been verified by the County, nor shall Contractor allow any Subcontractor to commence work on its Contract until all similar insurance required of the Subcontractor has been so obtained and approved.

The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

11.2.1.1 Workers' Compensation/Employers Liability

A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this Contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

11.2.1.2 Commercial/General Liability Insurance

The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse and underground hazards.
- (e) Personal injury
- (f) Contractual liability.
- (g) \$2,000,000 general aggregate limit.

11.2.1.3 Automobile Liability Insurance

Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

11.2.1.4 Increased General Liability and Automobile Liability Insurance Limits for Larger Construction Projects

Construction contracts for projects of one million (\$1,000,000) or over and less than three million (\$3,000,000) require limits of not less than three million (\$3,000,000) in General Liability and Auto Liability coverage.

Construction contracts for projects of three million (\$3,000,000) or over and less than five million (\$5,000,000) require limits of not less than five million (\$5,000,000) in General Liability and Auto Liability coverage.

Construction contracts for projects of five million (\$5,000,000) or over require limits of not less than ten million (\$10,000,000) in General Liability and Auto Liability.

11.2.1.5 Course of Construction/Installation (Builder's Risk) Property Insurance

Course of Construction/Installation (Builder's Risk) Property Insurance providing all risk, including theft coverage for all property and materials to be used on the project. The insurance policy shall not have any coinsurance penalty.

11.2.1.6 Umbrella Liability Insurance

An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

11.2.1.7 Continuing Products/Completed Operations Liability Insurance

Contractor shall provide Continuing Products/Completed Operations Liability Insurance with a limit of not less than five million (\$5,000,000) for each occurrence for at least three years following substantial completion of the work on projects over one million (\$1,000,000).

11.2.1.8 Environmental Liability Insurance

Any contract that involves the use, handling, transportation, storage, abatement, containment or testing of any substance that is potentially toxic or hazardous to the environment, including but not limited to, those listed as hazardous by the United States Department of Transportation or the CAL OSHA “Director’s list of Hazardous Substances” or listed as radioactive by the Nuclear Regulatory Commission, shall have the following additional requirements:

Environmental Liability Insurance with a combined single limit of not less than five million (\$5,000,000) per claim or occurrence and a separate aggregate for the contract project. The required additional insured endorsement shall protect the County without any restrictions.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

11.2.2 Subcontractor Insurance Requirements.

The Contractor agrees to require all parties or subcontractors, including architects or others it hires or contracts with related to the performance of this Contract to provide insurance covering the contracted operations with the basic requirements identified in Paragraphs 11.2.3 through 11.2.11 and 3.18 (indemnification), and the insurance specifications identified under Paragraph 11.2, (including waiver of subrogation rights) and naming the County as an additional insured. The Contractor agrees to monitor and review all such coverage and assumes all responsibility ensuring that such coverage is provided as required here.

11.2.3 Additional Insured

All policies, except for the Workers’ Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the

performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

11.2.4 Waiver of Subrogation Rights

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

11.2.5 Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

11.2.6 Severability of Interests

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

11.2.7 Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the County Department administering the contract evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

11.2.8 Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

11.2.9 Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

11.2.10 Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

11.2.11 Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

12 UNCOVERING AND CORRECTION OF WORK

12.1 Uncovering of Work

12.1.1 Specific Request. If a portion of the Work is covered contrary to the County's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the County, be uncovered for the County examination and be replaced at the Contractor's expense within the Contract Sum and without change in the Contract Time.

12.1.2 No Specific Request. If a portion of the Work has been covered, which the County has not specifically requested to examine prior to its being covered, the County may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the County's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense within the Contract Sum unless the condition was caused by the