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# 1 GENERAL PROVISIONS

## 1.1 Basic Definitions

**1.1.1 Acceleration Proposal Request.** County's written request to Contractor to submit an itemized proposal for Extraordinary Measures in order to achieve early completion of all or a portion of the Work when the need for such measures is not due to the fault of the Contractor.

**1.1.2 Addenda.** The Addenda or Addendum consist of the written clarifications of the Bid Documents issued by the County prior to the execution of the Contract.

**1.1.3 Applicable Law.** State, federal and local laws, statutes, ordinances, building codes, rules and regulations relating to the Work.

**1.1.4 Architect.** – The firm hired by the County to design the Project.

**1.1.5 As-Builts.** The Contractor's daily, current and complete on-site set of Plans and Specifications showing all changes, modifications and revisions performed during the progress of the Project construction.

**1.1.6 Chief of Project Management.** The Chief of Project Management of the Project and Facilities Management Department – Project Management.

**1.1.7 Board.** The Board of Supervisors for San Bernardino County.

**1.1.8 Bid Documents.** The documents contained in the bid packages including, but not limited to, advertisement for bids, instructions to bidders, bid proposal, non-collusion declaration, sample standard contract, contractor's affidavit and final release, sample bond forms, State wage determinations, general conditions, special conditions, technical specifications and Project drawings/plans.

**1.1.9 Change Order.** A Change Order is a written document prepared by the County reflecting the agreement between the County and Contractor for: a change in the terms or conditions of the Contract, if any; a specific Scope Change in the Work; the amount of the adjustment, if any, in the Contract Sum; and the extent of the adjustment, if any, in the Contract Time. The Change Order must be signed by an authorized representative of the County and Contractor.

**1.1.10 Change Order Request (COR).** As more specifically described herein below, a Change Order Request is a written document originated by the Contractor, which describes an instruction(s) issued by the County after the effective date of the Contract, which Contractor believes to be a Scope Change that may result in changes to the Contract Sum or Contract Time or, which describes the need for or desirability of a change in the Work proposed by Contractor.

**1.1.11 Construction Change Directive.** A Construction Change Directive is a unilateral written order prepared and signed by the County, directing Contractor to perform a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.

**1.1.12 Contract.** The Contract Documents form the Contract (“Contract” or “Agreement”).

**1.1.13 Contract Documents.** The Contract Documents consist of the documents enumerated as such in the Contract between County and Contractor, including, but not limited to, all Addenda issued prior to and Modifications issued after the effective date of the Contract, Plans/drawings, Specifications, request for qualifications, instructions to bidders, general conditions, special conditions and bonds.

**1.1.14 Contract Sum.** The term “Contract Sum” means the amount of compensation stated in the Contract for the performance of the Work. The Contract Sum may be adjusted only by Change Order, Construction Change Directive, or written amendment to the Contract.

**1.1.15 Contractor.** The individual, partnership, corporation, joint venture, or other legal entity entering into the Contract with the County to perform the Work.

**1.1.16 County.** San Bernardino County.

**1.1.17 Date of Commencement.** The date for commencement of the Work fixed by County in a Notice to Proceed to Contractor.

**1.1.18 Day(s).** The terms “day” or “days” mean calendar days unless otherwise specifically designated in the Contract Documents. The term “Work Day” or “Working Day” shall mean any calendar day except Saturdays, Sundays and County recognized legal holidays.

**1.1.19 Defective Work.** Any or all of the Work, which is unsatisfactory, faulty, omitted, incomplete or deficient, in material, workmanship or operation, or which does not conform to the requirements of the Contract Documents, directives of the County, applicable code requirements, or the requirements of any inspection, reference standard, test, or approval specified in the Contract Documents.

**1.1.20 Department.** The San Bernardino County Project and Facilities Management Department.

**1.1.21 Director.** The Director of the Project and Facilities Management Department.

**1.1.22** Division. The San Bernardino County Project and Facilities Management Department – Project Management. The Project Management is represented by the Director or Chief of Project Management.

**1.1.23** Extraordinary Measures. Measures implemented by Contractor at County's direction to expedite the progress of construction of all or a portion of the Work, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) submitting a recovery schedule for resequencing performance of the Work or other similar measures, as more specifically described in Paragraph 2.8.

**1.1.24** Final Completion. The term Final Completion is the date, evidenced by the County's approval of Contractor's Final Application for Payment, when the Work has been completed and the requirements for Project closeout set forth in the Contract Documents including, but not limited to, those set forth in Paragraph 9.8 below, have been satisfactorily completed. May be demonstrated by the recording of a Notice of Completion by the County.

**1.1.25** Final Payment. County's payment of the Contract Sum due to Contractor for the entire Work, less only the sums which County is specifically allowed to withhold under the terms of the Contract Documents and Applicable Law.

**1.1.26** Modifications. A Modification is (i) a written amendment to the Contract signed by duly authorized representatives of the Parties, (ii) a Change Order, or (iii) a Construction Change Directive.

**1.1.27** Notice of Completion. Document that is submitted by the County to the County Recorder for filing and recordation when all Work called for in the Construction Documents has been completed.

**1.1.28** Notice to Proceed. The Notice to Proceed is a document issued by the County fixing the Date of Commencement for the Work. The Contract Time for Contractor's performance of the Work is measured in calendar days (not Work Days).

**1.1.29** Owner. The San Bernardino County or its duly authorized representative.

**1.1.30** Parties. The County and Contractor (i) may be referred to collectively in the Contract Documents from time to time as the Parties.

**1.1.31** Plans/Drawings. The Drawings, profiles, cross-sections, working drawings, and supplemental drawings or reproductions thereof, reviewed by the County or its authorized agent, which show the locations, character, dimensions, or details of the Work.



**1.1.32** Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the County or by Separate Contractors.

**1.1.33** Project Manager. County's Project Manager, identified by County in writing, is the County's Project Representative, who interprets and defines the County's policies, renders decisions with respect to Contractor's performance of the Work, approves Contractor's Applications for Payment, reviews and approves Contractor's schedules and submittals, reviews and approves Change Order Requests and Change Orders and Construction Change Directives, reviews all quantity calculations related to pay quantities, reviews and approves changes in the Contract Time, concurs in any defective Work notification, and reviews and determines Substantial Completion of the Work and Final Completion of the Work. The extent and limits of the authority of any designee of the County's Project Manager shall be set forth in writing. Contractor shall be entitled to rely on the decisions and information provided by such written designee subject to the limitations of authority set forth in writing. All correspondence and electronic communication shall flow through the Project Manager. The Project Manager does not have the authority to approve a Change Order, written amendment to the Contract or Change Order Directive on behalf of the County. Contractor acknowledges that all Change Orders, Change Order Requests, Construction Change Directives, and amendments to the written Contract require the approval of the Director, or his/her designee, and may also require the approval of the Board.

**1.1.34** Project Representative. Those individuals designated by the Parties in writing with authority to render decisions in connection with the Work and the Contract.

**1.1.35** Scope Change. A Scope Change is Work that is not reasonably inferable from the Contract Documents upon which the Contract Sum is based, by a Contractor with the skill, experience, and expertise necessary for the proper, timely, and orderly completion of the Work, and is (i) materially inconsistent with, or (ii) a material change in the quantity, quality, or other substantial deviation in, the Contract Documents upon which the Contract Sum is based; and are necessary to correct an error, omission or defect in the Contract Documents, which cannot reasonably be corrected in the construction process.

**1.1.36** Separate Contractors. The term Separate Contractors means licensed contractors performing a portion of the Project under separate contracts with the County.

**1.1.37** Site. The physical area designated in the Contract Documents for Contractor's performance of the Work.

**1.1.38** Specifications. The portion of the Contract Documents consisting of the written requirements for labor, materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services, including all Work and services defined in the Standard specifications, reference specifications, technical

specifications, special provisions, General Conditions, and specifications in supplemental agreements between the County and Contractor.

**1.1.38.1** Article, Paragraph, and Subparagraph titles and other identifications of subject matter in the Specifications are intended as an aid in locating and recognizing the various requirements in the Specifications. Except where the titling forms a part of the text, such as beginning words of a sentence or where the title establishes the subject, the titles are subordinate to and do not define, limit, or restrict the Specification text. Underlining or capitalizing of any words in the text does not signify or mean that such words convey special or unique meanings having a precedence over any other part of the Contract Documents. Specification text shall govern over titling and shall be understood to be and interpreted as a whole. The listings of various Sections of the Specifications are for convenience only and do not control the Contractor in dividing the Work among the subcontractors or establish the extent of the Work to be performed or provided by any Subcontractor or trade. **Contractor is solely responsible for providing the complete Work without respect to where or how the various parts of the Work may be indicated or specified.**

**1.1.39** Subcontractor. A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the Site. The term “Subcontractor” does not include a Separate Contractor or subcontractors of a Separate Contractor.

**1.1.40** Sub-subcontractor. A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site.

**1.1.41** Substantial Completion. Substantial Completion is defined to mean the state in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents as determined by the County so that the County can occupy and utilize the Work for its intended use and as further defined in the Contract.

**1.1.42** Work. The term “Work” means the construction and other services required by, and reasonably inferable from, the Contract Documents as amended by Contract Modifications, whether completed or partially completed, and includes all labor, materials, equipment, tools, and services provided or to be provided by Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project, and includes products purchased by Contractor from third parties, and thereafter sold to County by Contractor.

**1.1.43** Written Amendment to Contract – An amendment to the Contract which may change the Contract Sum or Contract Time, as necessary, due to unforeseen circumstances at the Project, additional Work required as a result of changes in Applicable Laws, or other appropriate facts necessitating a Contract amendment.

## 1.2 Correlation and Intent of the Contract Documents

**1.2.1 Complementary Documents.** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. All Work mentioned or indicated in the Contract Documents, and all Work reasonably inferable from them, shall be performed by the Contractor as part of the Contract unless it is specifically indicated in the Contract Documents that such work is to be done by others.

**1.2.2 Order of Precedence.** In the event of conflict between any of the Contract Documents the provision placing a more stringent requirement on the Contractor shall prevail. The Contractor shall provide the better quality or greater quantity of Work and/or materials unless otherwise directed by County in writing. In the event none of the Contract Documents place a more stringent requirement or greater burden on the Contractor, the controlling provision shall be that which is found in the document with higher precedence. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following order of precedence, with “(1)” being the highest:

- (1) Permits;
- (2) Modifications;
- (3) Specifications;
- (4) Detailed Plans/Drawings;
- (5) Large Scale Plans/Drawings;
- (6) Small Scale Plans/Drawings;
- (7) The Contract, including all exhibits, and Addenda with later Addenda having priority over earlier Addenda;
- (8) Special Conditions, if any;
- (9) General Conditions; and
- (10) Bid Documents.

**1.2.2.1** Nothing herein shall relieve the Contractor of its obligation to notify the County of any inconsistencies in the Contract Documents. Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the County in writing for such further written explanations as may be necessary.

**1.2.2.2** In the case of conflict or inconsistency in the Contract Documents, the conflict or inconsistency must be brought to the attention of the County for written clarification obtained from the County before proceeding with the Work affected by the conflict or inconsistencies. Failure to obtain such written clarification from the County will constitute waiver of any claim by Contractor related to such conflict or inconsistency.

**1.2.2.3** All Work shall conform to the Contract Documents. No change therefrom shall be made without review and written acceptance by County.

**1.2.3** Organization. Organization of the Specifications into divisions, sections, and articles, and sequential order of Plans/Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed.

**1.2.4** Well-Known Terms. Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**1.2.5** Contractor Deviations. No deviations by the Contractor from the Contract Documents relating to any portion of the services, materials, labor, or equipment required for the Work shall be construed to set a precedent with respect to subsequent interpretation of the Contract Documents or performance of the Work unless such a deviation is memorialized in a Modification to the Contract.

**1.2.6** Complete Agreement. The Contract Documents constitute the full and complete understanding of the Parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both Parties or pursuant to Article 7.

### **1.3 Capitalization**

Terms capitalized in these General Conditions include those which are (i) specifically defined, (ii) the titles of numbered articles, and identified references to paragraphs, subparagraphs and clauses in the document or (iii) titles of other Contract Documents or forms.

### **1.4 Interpretation**

**1.4.1** Omitted Articles. In the interest of brevity, the Contract Documents frequently omit articles such as “the” and “an”, but the fact that an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters whether or not non-limiting language (such as “without limitation, “but not limit to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

**1.4.2** References to Contract Documents. Where “as indicated”, “as detailed”, or words of similar import are used, it shall be understood that the reference is made to any one of the Contract Documents.

**1.4.3 Severability.** In the event any article, section, sub-article, paragraph, subparagraph, sentence, clause, or phrase contained in the Contract Documents shall be determined, declared, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable such determination, declaration, or adjudication shall in no manner affect the other articles, sections, sub-articles, paragraphs, subparagraphs, sentences, clauses, or phrases of the Contract Documents, which shall remain in full force and effect as if the article, section, sub-article, paragraph, subparagraph, sentence, clause, or phrase declared, determined, or adjudged invalid, illegal, unconstitutional, or otherwise unenforceable was not originally contained in the Contract Documents.

**1.4.4 Provisions Deemed Inserted.** Each and every provision and clause required by law to be inserted in the Contract Documents shall be deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause is included herein and, if through mistake or otherwise, any such provision is not inserted or not correctly inserted, then upon application of either Party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.

**1.4.5 Headings Not Controlling.** The various headings contained in the Contract Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Contract or any provision thereof.

**1.4.6 Singular/Plural/Gender Terms.** Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity whenever the context so requires.

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

**1.4.8 Referenced Standards.** Bulletins, standards, rules, methods of analysis or test, and specification of other agencies, engineering societies or industrial associations may be referred to in the Contract Documents. Reference may also be made to applicable ordinances, codes or regulations of any political subdivision having jurisdiction. These refer to the latest edition, including amendments in effect and published at the time of advertising the Project for bid, unless specifically referred to by edition, volume or date.

**1.5 Execution of Contract Documents**

**1.5.1** Signatures. The Contract shall be signed by the authorized representatives of the County and Contractor.

**1.5.2** Contractor Representations Concerning Contract Documents and Site Investigation. By executing the Contract, Contractor represents and warrants that: (i) the Contract Documents are sufficiently detailed to enable Contractor to determine the cost of the Work within the Contract Sum and Contract Time; (ii) it has visited the Project Site, familiarized itself with the local conditions under which the Work is to be performed including, without limitation, the conditions contained in any test results and/or reports provided to or obtained by Contractor, and the conditions reflected on any Site surveys provided to or obtained by the Contractor; (iii) it is fully experienced, qualified and competent to perform the Work set forth in the Contract Documents; (iv) it is properly equipped, organized and financed to perform the Work; (v) it is properly permitted and licensed by California and all other governmental entities to perform the Work required by the Contract and that it will retain only properly licensed Subcontractors to perform the Work of the Contract; (vi) it has familiarized itself with all conditions bearing upon transportation, disposal, handling, and storage of materials; (vii) it has familiarized itself with the availability of labor, water, electric power, and roads; (viii) it has familiarized itself with uncertainties of weather or similar observable physical conditions at the Project Site; (ix) it has familiarized itself with the character of equipment and facilities needed during performance of the Work; (x) it has familiarized itself with the staging and material storage constraints of the Project Site and surrounding buildings and will confine its staging and storage operations to approved areas; (xi) it shall maintain the immediate surrounding areas of the Project Site in a clean and safe manner at all times; (xii) it will coordinate its construction activities with County’s Separate Contractors, if any, performing work on the Project Site; (xiii) it will adhere to the assigned transit route identified by the County; and (xiv) it will adhere to and be bound by conditions set forth in the Contract Documents and any regulatory agency, utility, or governmental entity with jurisdiction over the Project. In addition, and without limiting the foregoing warranties, Contractor represents and warrants to County that prior to executing the Contract:

- (1)** Contractor has familiarized itself and will continuously familiarize itself throughout performance of the Work with the nature and extent of the Contract Documents, the Work, the Project Site, the identified existing conditions of the Project Site and locality, and all laws, rules, ordinances, and regulations of all government authorities and utilities having jurisdiction over the Project that may affect costs, progress, performance, or furnishing of the Work;
  
- (2)** Contractor has reviewed and carefully studied all examinations, investigations, explorations, tests, reports and studies provided to Contractor by County which pertain to the physical conditions at or contiguous to the Project Site or conditions which otherwise may affect the

cost, progress, performance or furnishing of the Work, within the Contract Time and Construction Schedule. Contractor may rely upon the accuracy of the technical data contained in such documents but not upon nontechnical data, interpretations, opinions or conditional statements contained therein;

(3) Contractor has reviewed all information and data shown or indicated on the Contract Documents with respect to existing underground facilities at or contiguous to the Project Site;

(4) As of the effective date of the Contract, Contractor has no knowledge of any conflicts, errors, or discrepancies in the Contract Documents other than those which Contractor has notified County of in writing prior to executing the Contract; and

(5) Contractor is experienced and competent in the interpretation and use of Specifications and Drawings, and in the use of materials, equipment and construction techniques as are required to successfully complete the Project. Contractor shall, at its own expense, employ any and all experts necessary to successfully complete the Work required by the Contract Documents.

## **1.6 Ownership and Use of Drawings, Specifications and Other Instruments of Service**

**1.6.1 Ownership of Contract Documents.** All Drawings, Specification, plans, sketches and other documents, including copies thereof, furnished by the County are and shall remain the property of the County and may be required to be returned to the County at the Contractor's expense. They are to be used only with respect to this Project and are not to be used on any other project. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the County's common law copyright or other reserved rights.

**1.6.2 Contractor's Assignment of Copyrights.** Project related documents created, prepared, or issued by Contractor, or its Subcontractors, including any Drawings, Specifications, and electronic data are "work for hire", and shall become the property of the County when prepared and shall be delivered to County whenever requested. The Contractor hereby assigns to the County, without reservation, all copyrights to all Project related documents, models, photographs, and other written expressions created by the Contractor.

**1.6.3 Submissions to County.** A copy of every technical memorandum and report prepared by Contractor shall be submitted to the County to demonstrate progress toward completion of Work. In the event County rejects or has comments on any such work product, County shall identify specific requirements for satisfactory completion by Contractor. Contractor shall provide County with Project related documents in

reproducible or electronic format, upon County's written request. All Project related documents shall be turned over to County upon termination of this Agreement or Final Completion, whichever occurs first.

## **1.7 Publicity**

The Contractor, its agents, employees, subcontractors and suppliers shall not engage in any communication or correspondence with persons not directly involved in the construction of the Project, concerning any aspect of the construction of the Project, without the express written consent of County. All communications to the media, or in response to inquiries made by private citizens, shall be issued solely through the County.

## **2 SAN BERNARDINO COUNTY'S DUTIES AND RESPONSIBILITIES**

### **2.1 General**

The County shall designate the Project Manager(s) defined in Paragraphs 4.1 below, in writing. Whenever the Contract Documents require or permit the County to take or request an action or approve or disapprove of an action or request made by another Party, the reference to "County" shall mean the County's Project Manager unless the Contract Documents or context make it clear that another person is authorized to act as the County's Project Manager. All communications to the County shall be made through the County's Project Manager. The Contractor shall not be entitled to rely on directions (nor shall it be required to follow the directions) from anyone outside the scope of that person's authority as set forth in written authorization pursuant to the Contract. Direction and decisions made by the County's Project Manager shall be binding on San Bernardino County. Contractor acknowledges that all Change Orders, Change Order Requests, Construction Change Directives and amendments to the written Contract require the approval of the Director, or his/her designee, and may also require the approval of the Board.

### **2.2 Reserved**

### **2.3 Information and Services Required of the County**

**2.3.1** Approvals for Permanent Structures. Except for the permits, fees, and other such items set forth under Subparagraph 3.7.1, that are the responsibility of the Contractor under the Contract Documents, the County shall pay for necessary assessments and charges reasonably required for construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

**2.3.2** Existing Utilities: Removal, Relocation and Protection. In accordance with California Government Code Section 4215, the County shall assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project Site which are not identified in the Contract Documents provided by County. Contractor shall be compensated for the costs of locating,



repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Contract Documents with reasonable accuracy, and for equipment on the Project Site necessarily idled during such work. Contractor shall not be assessed Liquidated Damages for delay in completion of the Work when such delay is caused by the failure of the County or the utility provider to provide for removal or relocation of such utility facilities. Nothing in this Paragraph shall be deemed to require the County to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Project Site can be inferred from the presence of other visible facilities, such as buildings, meters and junction boxes, on or adjacent to the Project Site. If the Contractor encounters utility facilities not identified by the County in the Contract Documents, the Contractor shall immediately notify, in writing, the County. In the event that such utility facilities are owned by a public utility, the public utility shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a price determined in accordance with Article 7 herein.

**2.3.3** Surveys. Contractor shall be responsible for locating, and shall locate prior to performing any Work, all utility lines, including telephone, cable, television, and fiber optic lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, without limitation, all buried pipelines and buried telephone cables, and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines.

**2.3.4** Time for Furnishing. Information or services required of the County by the Contract Documents shall be furnished by the County with reasonable promptness.

## **2.4 County's Right to Stop the Work**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or fails to carry out Work in accordance with the Contract Documents, the County may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the County to stop the Work shall not give rise to a duty on the part of the County to exercise this right for the benefit of the Contractor or any other person or entity. The County's right to stop the Work is in addition to and without prejudice to any other rights or remedies of the County.

## **2.5 County's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a forty-eight (48) hour period after receipt of written notice from the County to commence and continue correction of such default or neglect with diligence and promptness, the County may after such forty-eight (48) hour period give the Contractor a second written notice to correct such deficiencies within a second forty-eight (48) hour period. If the Contractor within such second forty-eight (48) hour period after receipt of such second notice fails to commence and continue to correct any deficiencies, the County, without

prejudice to other remedies the County may have, may correct such deficiencies. In such case an appropriate Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor, the cost of correcting such deficiencies, including compensation for any additional design services and expenses made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the County. The County's right to carry out the Work is in addition to and without prejudice to any other rights or remedies of the County.

## **2.6 Suspensions of Operations**

In addition to the County's right to stop the Work set forth in these General Conditions, the Contractor shall, upon receipt of County's written notice and within the time stated therein, suspend shipment and delivery of material and stop any part or all of the Work and operations under the Contract for such period or periods of time as the County may deem advisable and designate in said notice. Upon receipt of such notice to suspend operations, the Contractor shall immediately confer with the County concerning the probable duration of such suspension and stoppage, delays, and extensions of time resulting therefrom as well as the reduction and possible elimination of the Contractor's field cost and such other costs and expenses as may result directly from such Work stoppage. Upon written notice from the County to resume operations, the Contractor shall promptly resume all or any part of the Work and operations including securing of materials required by said resumption notice. Contractor shall be compensated for suspension in accordance with Article 13 herein.

## **2.7 Prohibited Interests**

No official of the County who is authorized in such capacity and on behalf of County to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any County structural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall become directly or indirectly interested financially in this Contract or in any part thereof. No officer, employee, attorney, engineer or inspector of or for County who is authorized in such capacity and on behalf of County to exercise any executive, supervisory or other similar functions in connection with construction of Project shall become directly or indirectly interested financially in this Contract in any part thereof. Contractor shall receive no compensation and shall repay County for any compensation received by Contractor hereunder, should Contractor aid, abet or knowingly participate in violation of this Section.

## **2.8 County's Right to Order Extraordinary Measures**

**2.8.1 Non-Compensable Extraordinary Measures.** In the event the County determines that the performance of the Work, or any portion thereof, has not progressed or reached the level of completion required by the Contract Documents due to causes within the control of Contractor, the County shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii)

supplying additional manpower, equipment, and facilities and (iii) submitting a recovery schedule for re-sequencing performance of the Work or other similar measures as defined as Extraordinary Measures in Paragraph 1.1 above. Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion as required by the Contract Documents. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with the Extraordinary Measures required by the County under or pursuant to this section. The County may exercise the rights furnished the County under or pursuant to this section as frequently as the County deems necessary to ensure that the Contractor's performance of the Work will comply with the Contract Time or interim completion dates set forth in the Contract Documents. If Contractor or its Subcontractors fail to implement or commence Extraordinary Measures within ten (10) calendar days of County's written demand, County may, without prejudice to other remedies take corrective action at the expense of the Contractor and shall reduce the Contract Sum.

**2.8.2** Compensable Extraordinary Measures. County, in its discretion, may issue a written request to the Contractor asking Contractor to submit an itemized proposal for Extraordinary Measures in order to achieve early completion of all or a portion of the Work, due to no fault of the Contractor, in a form acceptable to County within ten (10) calendar days after County's issuance of the Acceleration Proposal Request.

## **2.9 Authority of the Department and Division**

**2.9.1** The Division shall represent the County and shall decide, within the provisions of the Specifications and Drawings, all questions which may arise concerning the quality or acceptability of materials furnished and Work performed.

**2.9.2** All questions concerning substitutions, selections, materials, colors and textures shall be submitted to the Division for approval.

**2.9.3** In all cases requiring interpretation of the Drawings and/or Specifications, the decision of the Division shall be final.

**2.9.4** Final determination of the acceptable fulfillment of the Contract on the part of the Contractor shall be made by the Department.

**2.9.5** The Director is authorized to represent the County regarding any suspension or termination of this Contract. The Board must approve any assignment of this Contract.

## **2.10 Authority of Board**

The Board has the final authority in all matters affecting the Work.

## **2.11 Materials Furnished by County.**

**2.11.1** Materials furnished by the County will be available at locations designed in the Contract Documents, or if not designated in the Contract Documents, they will be delivered to a single location of County's choice within the Project area. They shall be hauled to the site of installation by the Contractor at its expense, including any necessary loading and unloading that may be involved. The cost of handling and placing materials furnished by the County shall be considered as included in the Contract Sum.

**2.11.2** The Contractor will be held responsible for all materials furnished to it, and it shall pay all demurrage and storage charges. Furnished materials, after delivery to Contractor, lost or damaged from any cause whatsoever shall be replaced by the Contractor. The Contractor will be liable to the County for the cost of replacing lost or damaged furnished material and such costs may be deducted from any monies due or to become due the Contractor.

## **3 CONTRACTOR'S DUTIES AND RESPONSIBILITIES**

### **3.1 General**

The Contractor shall perform the Work in accordance with the Contract Documents. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the County, or of the County's Separate Contractors, in their administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

### **3.2 Request for Information ("RFI")**

If the Contractor encounters any condition which the Contractor believes, in good faith and with reasonable basis, is the result of an ambiguity, conflict, error or omission in the Contract Documents (collectively the "Conditions"), it shall be the affirmative obligation of the Contractor to timely notify the County, in writing, of the Conditions encountered and to request information from the County necessary to address and resolve any such Conditions. If the Contractor fails to timely notify the County in writing of any Conditions encountered and the Contractor proceeds to perform any portion of the Work containing or affected by such Conditions, the Contractor shall bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment of the Contract Time or the Contract Sum. The Contract Time shall not be subject to adjustment in the event that the Contractor fails to timely request information from the County.

### **3.3 Supervision and Construction Procedures**

**3.3.1 Contractor's Means and Methods.** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention, and provide sufficient supervision to assure proper coordination and timely completion of Project. The methods and means adopted by the Contractor shall be such as to secure a quality of Work satisfactory to the County and to enable the Contractor to complete the Work by the Contract Time. The Contractor shall be responsible for and have control over construction means, methods, techniques, sequences, and procedures for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences, or procedures may not be safe, the Contractor shall give timely written notice within ten (10) calendar days to the County, such notice shall include proposed changes by Contractor, and Contractor shall not proceed with that portion of the Work without further instructions from the County. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences, or procedures without acceptance of changes proposed by the Contractor, the County shall be solely responsible for any resulting loss or damage.

**3.3.2 Contractor's Vicarious Liability.** Contractor shall be responsible to County for acts and omissions of Contractor's employees, Consultants, Subcontractors, Sub-subcontractors, and their agents and employees, and any other persons or entities performing any of the Work under a direct or indirect contract (or other arrangement) with the Contractor.

**3.3.3 Property Lines and Encroachments.** If required by County, prior to the commencement of the Work on the Project Site, County shall have all property corners and benchmarks verified and established by a State licensed land surveyor, shall locate the Project, together with all grades, lines, and levels necessary for the Work, on the Project Site, establishing necessary reference marks from which the Work can progress accurately and shall furnish Contractor with reasonable evidence of such verification, noting any errors, inconsistencies, or omissions discovered during such verification. The Contractor shall not disturb survey monuments, lot stakes (tagged), or bench marks without the consent of the County. The Contractor shall bear the expense of replacing any that may be disturbed without permission. Replacement shall be done only under the direction of a Licensed Land Surveyor or a Registered Civil Engineer authorized to practice land surveying within California. After all lines are staked out and before foundation Work is commenced, Contractor shall review with County the placement of all buildings and other permanent facilities to be constructed on the Site. Any encroachments resulting from the Contractor's locating or constructing the Work on adjacent properties to the Project Site as revealed by a survey of the foundations or an "as-built" survey, except for encroachments arising from errors or omissions not

reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall commence the remedy of such encroachments within thirty (30) calendar days after discovery thereof (unless circumstances require a more rapid response), at Contractor's sole cost and expense, either by the removal of the encroaching improvement (and the subsequent reconstruction of such improvement on the Project Site) or by agreement with the owner of the adjacent property, in a form and substance satisfactory to County in its sole discretion, providing a permanent easement for such encroachment.

**3.3.4** Inspection of Work In Place. The Contractor shall be responsible for the inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**3.3.5** Contractor's Representative. Contractor shall employ competent Project Staff as deemed necessary by Contractor. Any Project Staff member and any replacement member shall be subject to the approval of the County. Upon notice from the County requesting replacement of any Project Staff member who is unsatisfactory to the County, Contractor shall in a timely manner, but in no event longer than twenty-four (24) hours after notification, replace such member with a competent member satisfactory to the County.

**3.3.5.1** Superintendent. The Contractor shall provide an onsite full-time superintendent to assure proper coordination and timely completion.

### **3.4 Labor and Materials**

**3.4.1** Coordination. The Contractor shall coordinate its Work with that of all others on the Project including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and staging of its equipment in areas and locations approved by County. Where the proper and most effective space requirements, locations, and routing cannot be made as indicated in the Contract Documents, the Contractor shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

**3.4.2** Temporary or Permanent Work. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, sewer and electrical utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**3.4.3** Labor Discipline. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall not permit the possession or use of alcohol or illegal drugs on the jobsite nor shall the Contractor allow an employee, Subcontractor, material

man, or any other person under the influence of alcohol or illegal drugs, or who is otherwise incapacitated to work on the Project.

**3.4.4** Skilled Labor. None but skilled workmen shall be employed on any portion of the Work. When required in writing by the County, the Contractor, Subcontractor or Sub-Subcontractor shall discharge any person who is, in the reasonable opinion of the County, incompetent, unfaithful, disorderly or otherwise unsatisfactory, and shall not again employ such discharged person on the Work except with the written consent of the County. Such discharge shall not be the basis of any claim for compensation or damages against the County or any of its officers or agents.

**3.4.5** Procurement and Installation of Materials and Equipment. Contractor shall: (i) place orders for all materials and equipment, taking into account current market and delivery conditions necessary to meet the Construction Schedule; (ii) purchase and expedite the procurement of long lead time items to obtain their delivery by the required dates; and (iii) arrange for alternate sources for the supply of critical materials and equipment to maintain the schedule. Should Contractor fail in this duty, County reserves the right to order such materials and equipment as the County may deem advisable to maintain the schedule for the Work or the Contract Time and all expenses shall be charged to and paid for by Contractor within the Contract Sum. Contractor shall keep the County informed of the status of procurement and shall promptly notify County in writing of any materials or equipment which may not be available within the time scheduled or necessary for the Project. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations and routing cannot be made as indicated, the Contractor shall meet with all others involved, including, but not limited to, County, Architect, and Subcontractors before installation, to plan the most effective and efficient method of overall installation.

**3.4.6** Substitution of Materials, Process or Equipment.

**3.4.6.1** Whenever any particular material, process, or equipment is indicated in the Contract Documents by patent, proprietary, manufacturer or brand name, with or without the words "or equal", only such items shall be provided unless the County's prior written approval is obtained for the substitution. The burden of proving the quality of any material, process, or equipment proposed for substitution shall rest with the Contractor.

**3.4.6.2** If any substitution request offered by the Contractor is not found to be equivalent or cannot be delivered to the Site in compliance with the Project Schedule, Contractor shall furnish and install the material specified in the Contract Documents.

**3.4.6.3** Proposals for substitutions shall be submitted to the County using an approved format. Unless otherwise approved in writing by County, no substitution

will be considered or allowed by the County without Contractor's delivery of the following to County:

- (1) A full explanation of the proposed substitution and submittal of all supporting data including technical information, complete manufacturers catalogs, brochures, drawings, samples, warranties, certified copies of test results, installation instructions, operating procedures, and other descriptive information to substantiate Contractor's claim of equivalent quality and necessary for a complete evaluation of the proposal;
- (2) A complete description of the difference between the requirements of the Contract Documents and the proposed substitution, the comparative advantages and disadvantages of each, and the reasons the substitution is advantageous and necessary, including the benefits of the County and the Work in the event the substitution is acceptable;
- (3) A description of aspects of the Contract Documents affected by the proposal;
- (4) The adjustment, if any, in the Contract Sum in the event the substitution is acceptable;
- (5) The adjustment, if any, in the Contract Time and impact to the Construction Schedule;
- (6) The estimated cost of any engineering, design, or agency fees required for Work of all trades directly or indirectly affected by the substitution;
- (7) A list of projects, to the extent known, where the subject of the request was used and the results; and
- (8) Other information reasonably necessary to fully evaluate the substitution request.

**3.4.6.4** By submitting a substitution request, Contractor will be deemed to certify to the County that (i) the proposed substitution is equal to or exceeds all requirements of the pertinent Contract Documents as reasonably determined by Contractor; (ii) Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified; (iii) the cost data presented is complete and includes all related costs under Contract; (iv) Contractor will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects; (v) Contractor waives all Claims for additional costs related to the substitution which subsequently become apparent; and (vi) Contractor accepts all responsibility for direct or indirect costs and/or time impacts as result of the substitution.



**3.4.6.5** Contractor shall submit to County, or its designated representative (i.e. Architect) all requests for substitutions, including products to be reviewed as an approved equal, together with substantiating data, within 20 days after the award of the Contract, or as otherwise stated in the Contract Documents. Following commencement of construction, substitutions requested by the Contractor will be considered only when one or more of the following conditions are met and documented by Contractor:

- (1) Specified item fails to comply with regulatory requirements; or
- (2) Specified item has been discontinued by the manufacturer; or
- (3) Specified item, through no fault of the Contractor, is unavailable in the time frame required to meet the Project Schedule; or
- (4) Specified item, through subsequent information disclosure, will not perform properly or fit in designated space; or
- (5) Manufacturer declares specified product to be unsuitable for intended use or refuses to warrant installation of product.

**3.4.6.6** The County has reviewed the technical and aesthetic qualities of materials specified, and in no case will the County accept a substitution of a product with a lower cost which does not extend credit to the County.

**3.4.6.7** No incomplete request for substitution will be considered by the County, and products for which insufficient information is submitted will be disapproved by the County for lack of substantiating data.

**3.4.6.8** Failure of the Contractor to submit proposed substitutions for approval in the manner described may be deemed sufficient cause for disapproval by the County of any substitution otherwise proposed.

**3.4.6.9** Contractor shall proceed with performance of the Work as required by the Contract Documents and shall not modify such requirements in accordance with any substitution request unless the County approves such request in a written order. In the event County approves a substitution request and Contractor furnishes a material, process or article more expensive than that specified, the difference in cost shall be borne entirely by Contractor. Any engineering, design fees or agency fees required to make adjustments in material or work of all trades directly or indirectly affected by the approved substituted item shall be borne entirely by Contractor.

**3.4.7** Reference Standards. Any material specified by reference to the number, symbol, or title of a standard such as that of the American Society for Testing Materials ("ASTM"), Underwriters Laboratories, Factory Mutual, a product or commercial

standard, or similar standards, shall comply with the requirements of the latest revisions thereof and any supplement or amendment thereto in effect on the date of the Contract. The standards referred to, except as specifically modified in the Specifications, shall have the same force as if they were printed in full within the Contract Documents. Whenever a product is specified in accordance with such a Reference Standard, the Contractor shall present a certification from the manufacturer and test data to substantiate compliance, when requested by the County or required by the Specifications, certifying that the product complies with the particular standard or specification.

**3.4.8** Manufacturer's Instruction. Where it is required in the Contract Documents that materials, products, processes, equipment or the like be installed or applied in accordance with manufacturer's instructions, directions or specifications or words to this effect, it shall be construed to mean that said application or installation shall be in strict accord with current printed instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the jobsite. If there is a conflict between manufacturer's instructions and Applicable Law or the Contract Documents, Contractor shall notify County in writing to request clarification.

**3.4.9** Workmanship, Materials and Manufactured Items. All workmanship, equipment, materials, and articles incorporated in the Work are to be of the most suitable grade of their respective kinds for the purpose; and equipment, materials, and parts shall be new, best quality, undamaged, and free from defects.

**3.4.9.1** All materials to be incorporated in the Work shall be protected from damage during shipping, delivery, storage, and handling, and after installation until acceptance of the Work.

**3.4.9.2** Material and work quality shall be subject to the Project Manager's approval.

**3.4.9.3** Materials and work quality not conforming to the requirements of the Contract Documents shall be considered defective and will be subject to rejection.

**3.4.9.4** Defective work or material, whether in place or not, shall be removed immediately from the Site by the Contractor, at its expense, when so directed by the Project Manager.

**3.4.9.5** If the Contractor fails to replace any defective or damaged work or material after reasonable notice, the Project Manager may cause such work or materials to be replaced. The replacement expense will be deducted from the amount to be paid to the Contractor.

### **3.5 Warranty and Correction**

**3.5.1** Warranty. The Contractor warrants to the County that: (i) materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents; (ii) the Work will be of good quality and free from defects; (iii) the Work will conform to the requirements of the Contract Documents; and (iv) Contractor will deliver a Project free of stop notice claims. Work not conforming to these requirements, including substitutions not properly approved by the County, shall be deemed defective. Contractor warranty excludes improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the County, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 12.2 herein.

**3.5.2** Commencement of Correction Periods. In accordance with Paragraph 12.2 herein, in addition to warranties required elsewhere in the Contract Documents, Contractor shall, and hereby does, warrant all Work for a period of one (1) year commencing from the date of Final Completion of the Work and shall repair or replace any and all such Work, together with any other Work which may be displaced in so doing, that may prove defective in workmanship and/or materials, without expense whatsoever to County.

**3.5.2.1** This paragraph does not in any way limit the warranty on any items for which a longer guarantee is specified, or on any items for which a manufacturer gives a warranty for a longer period.

**3.5.3** No Limitation. Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations that the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligation other than specifically to correct the Work. Neither the making of Final Payment nor the use or occupancy of the work, in whole or in part, by County shall constitute acceptance of Work not in accordance with the Contract Documents or relieve the Contractor from liability for faulty or defective Work.

**3.5.4** Overlap. Where any warranties provided under the Contract Documents overlap, conflict, or are duplicative, Contractor shall be bound by the more stringent requirements.

**3.5.5** County's Right to Correct. If Contractor fails to commence corrections within forty-eight (48) hours after receipt of written notice, County, under the provisions of Article 12 herein, will proceed to have defects repaired and made good at the expense of Contractor and its performance bond surety, plus fifteen percent (15%) for County's

overhead and administrative expense. County may charge such costs against any payment due Contractor. If, in the opinion of the County, defective work creates a dangerous or hazardous condition or requires immediate correction or attention to prevent further loss to the County or to prevent interruption of operations of the County, the County may take immediate action, give notice, make such correction, or provide such attention and the cost of such correction or attention shall be charged against the Contractor. Such action by the County will not relieve the Contractor of the warranties provided in this Section or elsewhere in the Contract Documents.

**3.5.6** Procurement and Assignment of Warranties. Contractor shall obtain in the name of County, or transfer or assign to County or County's designee prior to the time of Final Completion of the Work, any and all warranties or guarantees which Contractor is required to obtain pursuant to the Contract Documents and which Contractor obtained from any other person or entity other than Contractor including, but not limited to, Subcontractors and manufacturers, and further agrees to perform the Work in such a manner so as to preserve any and all such warranties. Contractor shall secure written warranties from all Subcontractors in the form approved by County. Contractor and its Subcontractors shall offer any warranty upgrades or extensions that are offered by manufacturers of any equipment or system in the Project to the County.

**3.5.7** Survival of Warranties. The provisions of this Paragraph 3.5 shall survive Contractor's completion of the Work or termination of Contractor's performance of the Work.

### **3.6 Taxes**

**3.6.1** Payment. The Contractor shall pay all applicable sales, consumer, use, and similar taxes for the Work provided by the Contractor and such taxes shall be included in the Contract Sum.

**3.6.2** Liability for Employee Payments. Contractor accepts full liability for the payment of any and all contributions, deductions, or taxes for social security, unemployment insurance, old age and survivor's benefits, medical and health benefits, or for any other purpose not or hereafter imposed under any Applicable Law measured by the wages, salary or other remuneration paid to persons employed by or on behalf of Contractor for the Work. Contractor covenants and agrees to observe and fully comply with all Applicable Law, including procurement of any necessary occupational licenses, permits and inspection certificates.

### **3.7 Permits, Fees and Notices**

**3.7.1** Responsibility for Permits and Fees. Except for the permits, approvals, government fees, licenses and inspections which have been identified and designated elsewhere in the Contract Documents to be provided by the County, Contractor shall identify and obtain all permits, certificates, licenses, fees, approvals and inspections necessary or required for the proper execution and completion of the Work, or which are

customarily secured after execution of the Contract and shall submit to County copies of receipts for reimbursement within the Contract Sum. All such permits, licenses and certificates shall be delivered to the County before Contractor submits a final Application for Payment. Unless stated otherwise in the Contract Documents, the County will pay connection fees directly to the utilities for all permanent water and electrical connections.

**3.7.2** Notices. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

**3.7.3** Bonds. The Contractor shall procure and pay for all bonds required of the County by any public or private entity with jurisdiction over the project. Contractor shall prepare all applications, supply all necessary backup material, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, traffic regulation, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

**3.7.4** Compliance with Applicable Law.

**3.7.4.1** Contractor is responsible to perform all Work in accordance with the requirements of local agencies and inspectors having jurisdiction over the Work. If the Contractor observes that any portions of the Contract Documents are at variance with Applicable Law, Contractor shall promptly notify the County in writing.

**3.7.4.2** If the Contractor performs any Work when the Contractor knows or should have reasonably known it would be contrary to Applicable Law, Contractor shall assume full responsibility therefore and shall bear all costs (within the Contract Sum) directly or indirectly attributable to the correction of the Work. If Contractor fails to comply with any such codes, laws, ordinances, rules, and regulations, County may (without prejudice to any of its other rights or remedies) issue an order suspending all or any part of the Work.

### **3.8 Allowances**

Contractor shall include in the Contract Sum and Schedule of Values all Allowances provided for in the Contract Documents. Items covered by Allowances shall be supplied for such amounts approved by Owner. All expenditures for Allowances shall be separately itemized in each Application for Payment and are subject to County's prior approval. County shall not reimburse Contractor for Allowance costs in excess of the amounts specified in the Schedule of Values without County's prior written approval of such costs.

### **3.9 Contractor's Key Personnel and Subcontractors**

**3.9.1 Contractor's Project Manager.** The Contractor's Project Manager, as designated in the Agreement or as otherwise approved in writing by County, shall: (i) be present at the Project Site at all times that any Work is in progress and at any time that any Subcontractor or employee of Contractor is present at the Site; (ii) attend all job meetings; (iii) be actively involved throughout all phases of construction of the Project; (iv) maintain oversight of the Project at all times; (v) have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement; (vi) supervise and direct the Work using his or her best skill and attention; (vii) be responsible for the means, methods, techniques, sequences, and procedures used for the Work; (viii) adequately coordinate all portions of the Work; and (ix) act as the principal contact with County and all Subcontractors and inspectors on the Project. A biography or resume of Contractor's Project Manager, or any proposed designee, shall be submitted to the County at the preconstruction meeting.

**3.9.2 Contractor's Key Personnel.** In addition to its designated Project Manager, Contractor represents to County that certain additional key personnel, designated in the Agreement or as otherwise approved in writing by County, including but not limited to, the superintendent, will perform services required by the Contract Documents. County may at any time elect to add job categories to the Contractor's key personnel list.

**3.9.3 Changes in Contractor's Project Manager, Key Personnel and Subcontractors.** Contractor shall not make changes to its Project Manager, key personnel or Subcontractors, or reduce their responsibilities for this Project without the prior written approval of the County. Prior to making any changes to the Project Manager, key personnel, or Subcontractors, the Contractor shall submit the qualifications and experience of the Contractor's proposed replacement for the County's approval. If County determines, in its sole discretion, that the performance of any person or entity employed by Contractor is unsatisfactory, then at the written request of County, Contractor shall remove, reassign, or replace such individual or entity without increase in the Contract Sum and such individual or entity shall not be reemployed on the Project without the prior written approval of County.

**3.9.4 Qualifications and Licenses.** Work furnished by or on behalf of Contractor shall be performed by persons: (i) qualified to perform the Work assigned to them; and (ii) licensed to practice their respective trades or professions where required by Applicable Law in the State where the Project is located. Contractor's Project Manager, key personnel, and Subcontractors shall be experienced in projects of similar nature and complexity to the Project and must provide County with resumes of education, training, and relevant experience whenever requested and shall be approved by County prior to their assignment to the Project.

### **3.10 Documents and Samples at the Site**

**3.10.1 As-Built and Record Documents.** Contractor shall maintain at the Project Site and shall make available to County, one copy of the Contract Documents, Addenda, requests for information, bulletins, Change Orders and other Modifications to the Contract Documents, approved Construction Documents, Shop Drawings, Product Data, Samples and mock-ups, permits, inspection reports, test results, daily logs, schedules, subcontracts, and purchase orders in good order (the "Record Documents"). The Record Documents shall include a set of As-Built Construction Documents, which shall be continuously updated during the prosecution of the Work. The prints for As-Built Construction Documents will be a set of blackline prints produced by Contractor and approved by County at the start of construction. Contractor shall maintain said set in good condition and shall use colored pencils to mark-up said set with "record information" in a legible manner to show; (i) deviations from the County-approved Construction Documents made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing Construction Documents; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stubouts; and (v) such other information as County may reasonably request.

**3.10.2 Condition to Payment.** Contractor's obligation to keep Record Documents current, including As-Built Construction Documents, and to make them available to County is a condition precedent to County's duty to process Applications for Payment. The Contractor shall provide a written certification of this monthly review, signed by the County's Project Manager, and attach same to each Application for Payment. Within thirty (30) calendar days after Substantial Completion or earlier termination of the Agreement and as a condition precedent to Final Payment, Contractor shall provide final approved Record Documents including, but not limited to, As-Built Construction Documents and approved Shop Drawings. Contractor's obligations under Paragraph 3.10 shall survive completion of the Work or termination of Contractor's performance of the Work.

**3.10.3 Daily Logs.** Contractor shall maintain a daily log containing a record of weather, Contractor's own forces working on Site, Subcontractors working on the Site, number of workers for each Subcontractor on Site, materials delivered, Work accomplished, problems encountered and other similar relevant data as the County may reasonably require. The daily log shall be signed by Contractor's Superintendent, submitted within 24 hours (next working day) to County's Project Manager and shall be made available to others as directed by County.

### **3.11 Shop Drawings, Product Data and Samples**

**3.11.1 Shop Drawings.** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor, Subcontractor, Sub-

subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**3.11.2 Product Data.** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**3.11.3 Samples.** Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

**3.11.4 Purpose.** Shop Drawings, Product Data, Samples, and similar submittals (“Submittals”) are not Contract Documents. The list of required Submittals is designated in the Specifications. The purpose of these Submittals is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents, the way by which the Contractor proposes to conform to the information given and expressed in the Contract Documents.

**3.11.5 Contractor’s Submittals.**

**3.11.5.1 Prompt Submittals.** The Contractor shall review for compliance with the Contract Documents, confirm, and deliver to the County, Submittals within the timeframes required by the Contract Documents and with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the County or of separate Contractors. Contractor’s complete and timely submission of submittals in conformity with the Submittal Schedule (identified in the Specifications) is a material consideration of the Contract. In the event that the County reasonably determines that all or any portion of any Submittal fails to comply with the requirements of the Contract Documents and/or such Submittals are not otherwise complete and accurate so as to require re-submission more than one time, Contractor shall bear all costs (within the Contract Sum) associated with the review and approval of such resubmitted Submittals. No adjustment to the Contract Time or the Contract Sum shall be granted by the County to the Contractor on account of Contractor’s failure to make timely submission of any Submittals.

**3.11.5.2 Contractor’s Confirmation of Submittals.** After checking and verifying all field measurements and after complying with applicable procedures specified in the Specifications, Contractor shall submit to County in compliance with the Submittal Schedule for review and approval, or for other appropriate action, one (1) reproducible transparency (sepia) and four (4) opaque prints (unless otherwise specified in the Specifications) of all Shop Drawings and other Submittals, which shall bear a stamp or specific written indication that Contractor has satisfied Contractor’s responsibilities under the Contract Documents with respect to the review of the Submittal. All Submittals will be identified as the County may reasonably require and shall include at a minimum the name of the Project, name of the Contractor, be numbered consecutively and referenced to the Project Drawings or Specification section affected. Submittals shall be combined for singular



assemblies, items or materials. The data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data in order to enable County to review the information as required.

(1) Before submission of each Submittal, Contractor shall have determined and verified quantities and dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed and coordinated each Submittal with other Submittals and with the requirements of the Work and the Contract Documents.

(2) Shop Drawings shall show in detail the size, sections, and dimensions of all members; the arrangement and construction of all connections and joints, and other pertinent details; also, all holds, straps, and other fittings required by other contractors for attaching their work. When required by the County, engineering computations shall be submitted. The Contractor shall be responsible for delivering copies of Shop Drawings to all other persons whose work is dependent thereon.

(3) At the time of each submission, Contractor shall give County specific written notice of each variation that the Submittal may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Submittal submitted to County for review and approval of each such variation.

(4) If the Shop Drawings or manufacturer's data show variations from the Contract Document requirements because of standard shop practice or other reason, the Contractor shall make specific mention of such variations in its letter of transmittal.

(5) By reviewing and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and conditions related thereto, and has checked and coordinated the information contained within such Submittals with the requirements of the Work, of the Contract Documents and of the Shop Drawings for related Work.

**3.11.6** Review by County. Unless Contractor is notified in writing of a specific need for an extended period of time due to the nature or extent of the Shop Drawings being submitted, County shall utilize its best efforts to complete Shop Drawing review within a maximum of ten (10) calendar days. Submittals made by Contractor which are not required by the Contract Documents may be returned without action by the County. County's review and approval will be general and for compliance with design intent and information given in the Contract Documents and shall not extend to means, methods,

techniques, sequences, or procedures of construction (except where a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents). Review of Shop Drawings shall not relieve the Contractor from the responsibility for proper fitting and construction of the Work, nor from furnishing materials and work required by the Contractor which may not be indicated on the reviewed Shop Drawings. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor shall make corrections required by County, and shall return the required number of corrected copies of Submittals and submit as required new Submittals for review and approval. Contractor shall direct specific attention in writing to any and all revisions other than the corrections called for by County on previous Submittals.

**3.11.7 Performance.** The Contractor shall perform no portion of the Work requiring review of Submittals until the County has reviewed the respective Submittal. Such Work shall be in accordance with the approved Submittals and the Contract Documents, and no Work shall be started without obtaining prior written approval from the County.

**3.11.8 Approved Submittals.** The Work shall be performed in accordance with approved Submittals and the Contractor shall not be relieved of responsibility for variations from requirements of the Contract Documents by the County's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Contractor has specifically informed the County in writing of such deviation at the time of submittal and a Change Order or Construction Change Directive has been issued, authorizing the variations. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the County's approval thereof.

**3.11.9 Resubmission.** Contractor shall direct specific attention, in writing, on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those required by the County on previous submittals. In the absence of such written notice the County's approval of a resubmission shall not apply to such revisions.

**3.11.10 Conflicts, Errors or Omissions.** If Contractor discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, Contractor shall notify the County and receive written instruction before proceeding with the affected Work.

**3.11.11 Maintenance at Site.** The Contractor shall maintain at the Site of the Project, at all times, a complete file of County reviewed Shop Drawings and manufacturers' data of his own and all Subcontractors.

## **3.12 Site Conditions**

**3.12.1** The Contractor represents that it has taken the necessary steps to ascertain the nature, location and extent of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work, such as:

- (1) conditions bearing on transportation, disposal and storage of materials;
- (2) the availability of labor, water, power and roads;
- (3) normal weather conditions;
- (4) physical conditions at the Site;
- (5) the conditions of the ground;
- (6) the character of equipment and facilities needed prior to and during the performance of Work

**3.12.2** To the extent the Contractor encounters subsurface conditions or hazardous materials which differ materially from that actually known by the Contractor, or from those ordinarily known to exist or contained in information about the Site made available to Contractor prior to the deadline to submit bids, or generally recognized as inherent in the area, then notice by the Contractor shall be immediately given to the County, before conditions are disturbed, and in no event later than two (2) business days after the first observance of the conditions. If such conditions could not have been reasonably identified by Contractor's Site investigations and available existing data, and the Contractor incurs an increase or decrease in costs or delays as a result of such concealed conditions, such conditions may be subject to a Change Order.

Should any existing utilities or services be disturbed, disconnected or damaged during construction, the Contractor shall be responsible, at no additional cost or time to the County, for all expenses and consequential damages of whatever nature arising from such disturbance or the replacement or repair thereof and shall repair such items as required to maintain continuing service, including emergency repairs.

**3.12.3** The Contractor is responsible for foreseeable site conditions and toxic materials to the extent described in the Contract Documents and/or could be reasonably inferred by the Contractor based on its experience and expertise on similar projects.

**3.12.4** **Reserved.**

**3.12.5** The Contractor shall verify the location and depth (elevation of all existing utilities and services before performing excavation Work.

### **3.13 Use of Site**

**3.13.1** Site Constraints. Prior to mobilization on the Project Site, the Contractor shall submit to the County for approval a Site Constraint Plan including layout drawings to scale as required to fully describe the proposed locations of all temporary construction facilities and controls. This plan shall show the proposed activities in each portion of the Work area and identify the areas of limited use or nonuse. This plan shall also show proposed vehicle access routes and traffic control. Contractor shall confine operations at the Project to the areas designated in the Contract Documents and the approved Site Constraint Plan and within the hours permitted by codes, laws, ordinances, permits, or the County, and shall not unreasonably encumber the Project Site or the adjoining sidewalks, streets, and alleyways with any material, equipment, or debris. In that

regard, Contractor shall keep the Site and surroundings clean and in a safe condition in accordance with Paragraph 3.15 herein and the Specifications. Contractor shall use only those locations designated on the approved Site Construction Plan for locating Contractor's trailers, staging areas, lay-down areas, and other construction operations. The Contractor shall not unreasonably encumber the Site with any materials or equipment, nor permit any persons on the Site, or any activity at the Site, except as the presence of those persons, or that activity, is directly related to the Project. The Contractor shall be liable for any and all damage caused by it to the County premises.

**3.13.2** Coordination. Contractor expressly acknowledges that County, its own forces, and County's Separate Contractors may be working simultaneously with Contractor on the Project during certain periods of time in certain portions of the Project Site. Contractor and County will take all steps necessary in connection with the construction Work not to interfere with the use and occupancy of the Project Site by County's Separate Contractors and personnel to minimize any interruption of services to such person, including, without limitation, utilities, ingress and egress, and parking. Contractor further agrees to coordinate its construction activities with all others performing work on the Project Site, including deliveries, storage, and installation. Contractor shall meet and consult with County from time to time at County's request to insure that Contractor and County are fully advised of all other construction activities on the Project Site, and Contractor shall take such steps as are reasonably necessary at County's request to coordinate its Work with the Work of County's Separate Contractors on the Project Site.

**3.13.3** Security. The Contractor shall be responsible for providing security at the Site of the Work with all such costs included in the Contract Sum. A temporary fence shall surround the Project Site unless otherwise required by County. All security provided by Contractor shall be coordinated with County's existing security personnel, if any. In addition, the Contractor shall take all necessary precautions and provide enclosures, barricades, security guards, signs, notices, shoring, bracing, passageways, lights, and such other materials, equipment, and services as may be required (including, without limitation, such protections as may be required by Applicable Laws) for the protection of: (i) all person who may be on the Project Site or in other areas affected by the Contractor's operations; and (ii) the County's and any third party's personal and real property. Contractor shall execute all repairs to land, roadways, structures, utilities, sidewalks, parkways and alleys damaged by the operations under this Contract.

**3.13.4** Utility Interruption. When it is necessary to interrupt any existing utility service, a minimum of fourteen (14) calendar days advance written request for interruption of services shall be given by the Contractor to the County. Interruption of these services shall be of the shortest possible duration and shall be approved by the County in advance of such interruption. In the event that such notices and approvals are not secured prior to interruption in utility services the Contractor shall be financially liable for any and all damages suffered by the County and third parties due to unauthorized interruption.

**3.13.5** Parking. The Contractor shall coordinate and obtain all construction related parking. The cost of all Contractor parking shall be included in the Contract Sum.

### **3.14 Cutting and Patching**

**3.14.1** Responsibility. Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

**3.14.2** Separate Contractors. Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the County or County's Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. Contractor shall not cut or otherwise alter such construction by the County or a Separate Contractor except with written consent of the County.

**3.14.3** Finish Surfaces. Cutting, drilling or other mechanical change to surfaces constituting final finish, including but not limited to, glass, marble, tile mosaic, finish wood, finish metals, etc., necessary for the fastening, installation, securing, and/or insertion of any devices, equipment, and/or materials shall be accomplished with special care. If requested by the County, Contractor shall submit procedures for finish changes to be done by any trades other than the one installing the specific finish material. Failure to obtain County approval shall place full responsibility upon the Contractor for any extra cost occasioned by unacceptable finish-surface.

### **3.15 Cleaning Up**

**3.15.1** Continuous Obligations. The Contractor shall keep the Project Site and surrounding area free from accumulation of waste materials or rubbish at all times. As construction is completed on a daily basis, paved surfaces adjoining the Project shall be broomed clean and other surfaces of the Project Site raked clean. If the Contractor defaults or neglects to maintain the Project free from accumulation of waste and rubbish as set forth above, and fails within a twenty-four (24) hour period after receipt of oral notice, subsequently confirmed in writing, to commence and continue correction of such default or neglect with diligence and promptness, the County may after such twenty-four (24) hour period, immediately, without prejudice to other remedies the County may have, correct such deficiencies. In such case, an appropriate Construction Change Directive shall be issued deducting from payments then and thereafter due the Contractor the cost of correcting such deficiencies. If payment then and thereafter due the Contractor is not sufficient to cover such amounts, the Contractor shall pay the difference to the County on demand.

#### **3.15.2** Cleaning and Environmental Controls.

- (1) Maintain areas free of waste materials, debris, and rubbish. Maintain site in a clean and orderly condition.
- (2) Remove waste materials, debris and rubbish from site and dispose off site legally.

- (3) The Contractor shall take appropriate action to insure that no dust originates from the Project Site.
- (4) Spoil sites shall not be located where spoil shall be washed back into a street gutter, storm drain, runoff conveyance or ocean.
- (5) Water containing mud, silt, or other pollutants from activities, shall not be allowed to enter the ocean or placed in locations that may be subject to storm runoff.

**3.15.3** Water Pollution Control. Contractor must comply with all requirements of the California State Water Resources Control Board, including the statewide General Permit for Discharges of Storm Waters Associated with Construction Sites (See Order No. 2009-0009-DWQ). This includes, but is not limited to, paying all appropriate fees, filing all required documentation, and complying with all the regulations of the State Water Resources Control Board.

As part of the County's Storm Water Management Program, implementation of minimum Best Management Practices (BMPs) is required for this Contract. The Contractor is directed to comply with applicable requirements of the BMPs that are specified under this section to reduce pollutants from entering the storm drain system.

The Contractor shall maintain copies of these BMP fact sheets (guidance paper) at the Project Site and shall make these fact sheets available during construction activities. Best Management Practices shall be defined as any program, technology, process, siting criteria, operating method, measure, or device that controls, prevents, removes, or reduces pollution. These BMPs have been selected from the California Storm Water Best Management Practice Handbook, Municipal Industrial, and Construction Volumes (May 1993). These handbooks contain a full description of each BMP and provide for its implementation. Copies of the handbook may be obtained from:

San Bernardino County  
Environmental Management Division  
825 East Third Street – Room 201  
San Bernardino, CA 92415-0835  
Telephone No. (909) 387-8112

As a minimum, the Contractor shall implement the following BMPs in conjunction with all its activities construction operations:

- B.1. Site Planning Consideration  
Preservation of Existing Vegetation (ESC02)
- B.2. Construction Practices  
Structure Construction and Painting (CA03)  
Spill Prevention and Control (CA12)  
Dust Control (ESC21)  
Storm Drain Inlet Protection (ESC54)

- B.3. Vehicle & Equipment Management  
Vehicle & Equipment Cleaning (CA30)  
Vehicle & Equipment Maintenance (CA32)
- B.4. Material Management  
Solid Waste Management (CA20)  
Concrete Waste Management (CA23)  
Sanitary/Septic Waste Management (CA24)

**3.15.3.1 Additional BMPs.** Contractor may be required to implement additional BMPs as a result of a change in actual field conditions, Contractor activities, or construction operations. When more than one BMP is listed under each category, the Contractor shall select the appropriate and necessary BMPs in order to achieve the BMP objective.

**3.15.3.2 Enforcement.** The County, as a permittee, is subject to enforcement actions by the Regional Water Quality Control Board, U.S. Environmental Protection Agency, environmental groups and private citizens. The Contractor shall be responsible for the costs and for any liability imposed by law as a result of the Contractor's failure to comply and/or less than complete implementation with the requirement set forth in this section "Water Pollution Control". Cost and liabilities include, but are not limited to, fines, penalties and damages whether assessed against the County or the Contractor. In addition to any remedy authorized by law, so much of the money due to the Contractor under the Contract that shall be considered necessary by the County may be retained by the County until disposition has been made of the costs and liabilities.

**3.15.3.3 Maintenance.** Contractor shall ensure the proper implementation and functioning of BMPs control measures, and shall regularly inspect and maintain the construction site for the BMPs identified in Section 3.15.3 above. The Contractor shall identify corrective actions and time frames to address any damaged measures or reinstate any BMPs that have been discontinued.

**3.15.4 Final Completion.** In order to achieve Final Completion of the Work, the Contractor must remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials as well as the requirements set forth in the Contract Documents. In addition to the general cleaning, the Contractor must perform the following special cleaning requirements:

- (1) Remove putty stains from glazing, then wash and polish glazing;
- (2) Remove marks, stains, fingerprints, and other soil or dirt from glass, painted, stained, or decorated work;
- (3) Remove temporary protection and clean and polish floors and waxed surfaces;
- (4) Clean and polish hardware and plumbing trim; remove stains, dust, dirt, plaster, and paint;
- (5) Remove spots, soil, plaster, and paint from tile work, and wash tile;

- (6) Clean all fixtures and equipment, remove excess lubrication, clean light fixtures and lamps, polish metal surfaces;
- (7) Vacuum-clean carpeted surfaces and remove any stains; and
- (8) Remove debris from roofs, downspout, and drainage system.

### **3.16 Access to Work**

The Contractor shall provide the County and its respective Project Managers, Consultants, and other persons authorized by the County, access to the Work in preparation and progress wherever located. Contractor shall provide safe and proper facilities for such access and for inspection.

### **3.17 Royalties, Patents and Copyrights**

**3.17.1 Contractor Must Secure Rights.** The Contractor shall secure in writing from all patentees, copyright holders, and assignees of all Project-related documents, all copyrights, assignments, and licenses related to such expression (e.g., designs, drawings, Contract Documents, specifications, documents in computer form, etc.) as necessary to allow the County the full, unlimited, and unencumbered use of that expression for the execution, operation, maintenance, modernization or expansion of the Project. The Contractor shall immediately convey all such copyrights, assignments, and licenses to the County without reservation. In the case of products, materials, systems, etc., protected by patent, the Contractor shall not specify or cause to be specified any infringing use of a patent. The Contractor shall pay all royalties and license fees.

**3.17.2 Infringement.** Should the Contractor become aware of or receive notice of potential infringement of any intellectual property right related to the Project, regardless of the source of that awareness or notice, in addition to its indemnity obligation, the Contractor shall (a) immediately cease the copying and any other activity which is the potential source of infringement; and within seven (7) calendar days (b) investigate the potential infringement; (c) submit to the County copies of all documents relating to that awareness, the notice, or the object thereof; and (d) issue to the County a complete written response and analysis of the potential infringement and the course of action recommended by the Contractor. The Contractor shall submit to the County a supplement of the initial report within seven (7) calendar days of the Contractor's receipt of, or awareness of, additional related information. Nothing in this Agreement shall be deemed to relieve the Contractor of its obligations under this Article, nor shall the County's receipt of the information indicated in this Article give rise to any duty or obligation on the part of County.

**3.17.3 Assignment of Rights.** The Contractor offers and agrees to assign to the County all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act [Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code of the State of California], arising from purchases of goods, services or materials pursuant to the performance of the Work. This assignment will be made



and become effective at the time the County tenders Final Payment to the Contractor, without further acknowledgement by the Parties.

### **3.18 Indemnification**

To the fullest extent possible permitted by law, Contractor assumes liability for and agrees, at the Contractor's sole cost and expense, to promptly and fully indemnify, defend (with counsel reasonably approved by County) (even if the allegations are false, fraudulent, or groundless), and hold harmless the County and its authorized officers, employees, agents and volunteers (Indemnitees) from and against any and all claims (including claims against the County seeking compensation for labor performed or materials used or furnished to be used in the work or alleged to have been furnished on the project, including all incidental or consequential damages resulting to the County from such claims), allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceedings, demands, losses, costs, damages, judgments, liens, stop notices, penalties, anticipated losses of revenue and/or liability, and expenses (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, or investigation expenses) arising out of, resulting from, or in any way (either directly or indirectly) related to the contract, the work, the project or any breach of the Contract by Contractor (or any of its officers, agents, employees, subcontractors, or any person performing any of the work, or from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Indemnitees on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor's indemnification obligation applies to the Indemnitee's "passive" negligence but does not apply to the Indemnitee's "sole" or "active" negligence or "willful misconduct" within the meaning of Civil Code section 2782 provided such "active" negligence or "willful misconduct" is determined by agreement of the parties or by findings of a court. In instances where an Indemnitee's "active" negligence accounts for only a percentage of the liability for the claim involved, the obligation of the Contractor will be for that entire percentage of liability for the claim not attributable to the "active" negligence or "willful misconduct" of the Indemnitees. The County shall be consulted with regard to any proposed settlement.

The duty of the Contractor to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by Contractor of the tender of any claim from the County. The Contractor's obligation to defend the County shall be at Contractor's sole expense, and not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines that the Contractor is not liable. The duty to defend shall apply whether or not a claim has merit or is meritless, or which involves claims or allegations that any or all of the Indemnitees were actively, passively, or concurrently negligent, or which otherwise asserts that the Indemnitees are responsible, in whole or in part, for any claim. The Contractor shall respond within thirty (30) calendar days to the tender of any claim for defense and/or indemnity by the County, unless the County agrees in writing to an extension of this time. The defense provided to the Indemnitees by Contractor shall be by well qualified, adequately insured, and experienced legal counsel acceptable to the County Counsel.

It is the intent of the parties to the Contract that the Contractor and its subcontractors of all tiers shall provide the Indemnitees with the broadest defense and indemnity permitted by law. In the event that any of the defense, indemnity, or hold harmless provisions are found to be ambiguous, or in conflict with one another, it is the parties' intent that the broadest and most expansive interpretation in favor of providing defense and/or indemnity to the Indemnitees be given effect.

Contractor shall ensure, by written subcontract agreement, that each of Contractor's subcontractors of every tier shall protect, defend, indemnify and hold harmless the Indemnitees with respect to all claims arising out, in connection with, or in any way related to each such subcontractor's work in the same manner in which Contractor is required to protect, defend, indemnify, and hold the Indemnitees harmless. In the event Contractor fails to obtain such defense and indemnity obligations from its subcontractors as required herein, Contractor agrees to be fully responsible to the Indemnitees according to the terms of this Section.

Contractor's indemnification and defense obligations set for in this Section are separate and independent from the insurance requirements and do not limit, in any way, the applicability, scope, or obligations set forth in such insurance requirements. The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations.

Contractor's obligations under this Section are binding on Contractor's and its subcontractors' successors, heirs and assigns and shall survive the completion of the work or termination of the Contractor's performance of the work.

### **3.19 Signs and Advertising**

Contractor shall not place or maintain any advertising signs, bills, or posters, nor shall it allow the same to be placed in or about the Project Site, or on any structure, fence, or barricade located on the Project Site, except as may be specified herein or approved in writing by the County, which approval shall not be unreasonably withheld, delayed, or conditioned. County shall have the right to reasonably approve the size, style, text, and location of any Contractor sign placed on the Project Site or on any structure, fence, or barricade located at the Project Site. Notwithstanding any other provision of the Contract Documents, County shall have complete discretion with respect to placement of Subcontractor and Sub-subcontractor signs on the Project Site.

### **3.20 Coordination with Neighboring Property**

Contractor shall coordinate with adjoining property businesses, tenants, and their customers and contractors to provide access to neighboring property and shall implement measures to minimize disruption to operations and occupancy of neighboring property businesses, tenants, and their customers and contractors.

### **3.21 Nondiscrimination**

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

### **3.22 Mandatory Provisions in Specifications**

Any mention in the sections of the Specifications or indication on the Drawings of articles, materials, operations, or methods requires that the Contractor provide each item mentioned or indicated, or quality or subject or qualifications noted. The Contractor shall perform according to conditions stated each operation prescribed; and provide therefore all necessary labor, equipment, transportation and incidentals, even though such mention of articles, materials, operations, methods, quality, qualifications or conditions is not expressed in complete sentences.

### **3.23 Plans and Specifications**

**3.23.1** Unless otherwise provided in the Contract Documents, the County will furnish the Plans and Specifications to the successful Contractor on electronic media (CD) at no cost. If the successful Contractor requires a paper copy of the Plans and Specifications the Division will provide one copy without charge. Any additional paper copies will be provided by the Division to Contractor at \$0.10 per page.

#### **3.23.2 Familiarity with Plans and Specifications.**

**3.23.2.1** Contractor shall carefully examine the Contract Documents, all applicable codes and the Site. The submission of a bid shall be conclusive evidence that the Contractor has investigated and has personal knowledge of the conditions to be encountered as to character, quality, scope of Work to be performed, and quantities of materials to be furnished. Submission of a bid also infers that the Contractor has knowledge of the use to which the Work is to be put, and the climatological conditions to which it shall be exposed. Any uncertainties by the Contractor shall be submitted to the County in writing at least eight (8) days (or within the time designated in the Advertisement for Bids, Instructions to Bidders, or otherwise in Bid Documents) prior to the opening of bids, and failure to do so constitutes a waiver of any future claim.

**3.23.2.2** It shall be the responsibility of Contractor to be so thoroughly familiar with all details of the Project, including all Contractor and Subcontractor work, that the following shall be brought to the attention of the County for clarification in sufficient time to give the County time to respond before an error is made in the bid or in construction:

- (1) Errors and omissions in the Drawings and Specifications;
- (2) Work shown on the Drawings or in the Specifications which, if so constructed, would result in confusion or interference with other work or the work of other trades, including the location of fixtures and equipment.
- (3) Any noted violations of applicable codes.

**3.23.2.3** Changes to the Contract Sum will not be approved for the cost of correction work where such work could have been avoided by proper examination of the Drawings and Specifications by the Contractor, and the Work will be held in abeyance pending instructions from the County.

**3.23.3** Interpretation of Plans and Specifications.

**3.23.3.1** In general, the Drawings will show dimensions, positions, and kind of construction; and the Specifications will define materials, quantities, and methods. Any Work called for on the Drawings and not mentioned in the Specifications, or vice versa, shall be performed as though fully set forth in both. Work not particularly detailed, marked or specified, shall be the same as similar parts that are detailed, marked or specified.

**3.23.3.2** Every part of the Work, as shown on the Drawings and described in the Specifications, must be complete and finished. No deviations are to be made from the Drawings or Specifications without previously obtaining written authorization from the County. Failure to obtain such written clarification from the County will constitute waiver of any claim by Contractor related to such conflict or inconsistency.

**3.23.3.3** The Drawings shall be accurately followed as to scale, except where figures are given to determine dimensions, which in all cases shall be calculated from figures shown on the Drawings and take preference to scale measurements. Large scale details take precedence over small drawings in all cases, full-scale drawings have preference. Obvious discrepancies between scale and figured dimensions, not marked "not to scale," must be brought to the County's attention before proceeding with the Work affected by the discrepancy. Failure to submit any such discrepancies in writing shall constitute a waiver of future claims.

**3.23.3.4** Architectural and structural Drawings take precedence over electrical and mechanical Drawings in regard to location and arrangement of fixtures, outlets, and equipment. Electrical and mechanical Drawings take precedence in describing and

specifying equipment and in describing the diagrammatic requirements. If the Contractor has any question regarding precedence noted in this Paragraph, a written clarification shall be obtained from the County, and the failure to do so constitutes a waiver of any claim.

**3.23.3.5** Should an error or inconsistency be found in the Specifications or Drawings, or in the Work done by others affecting Contractor's Work, the Contractor shall notify the County at once, and the County will issue instructions as to procedure. If the Contractor proceeds with the Work so affected without such instructions, it will make good any resulting damage or defects in his or adjacent work. This includes typographical errors in the Specifications and notational errors on the Drawings where doubtful of interpretation.

**3.23.3.6** The general character of the detailed Work is shown on the Drawings, but minor modifications may be made in details when needed to more fully explain the Work and the same shall be considered part of the Contract. Should any detail submitted after award of Contract, in the opinion of the Contractor, be more elaborate than the scale Drawings and the Specifications indicate, written notice thereof shall be given to the County prior to the performing the Work pursuant to Article 7. The claim will then be considered and, if justified, said detail drawings will be amended or the extra work authorized. Contractor's failure to provide the County with the required notice shall relieve the County of any claim.

**3.23.3.7** Where on any Drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply also to all other like portions of the Work. Where ornament or other detail is indicated on starting only, such detail shall be continued throughout the course of parts in which it occurs and shall also apply to all other similar parts in the Work unless otherwise indicated.

#### **3.23.4** Accuracy of Plans and Specifications

**3.23.4.1** Omissions from the Plans and Specifications shall not relieve the Contractor from the responsibility of furnishing, making, or installing all items required by law or code or usually furnished, made or installed in a project of the scope and general character indicated by the Plans and Specifications.

**3.23.4.2** The topography of Site and existence and location of utilities indicated on Plans are in accordance with the best information obtainable, but cannot be guaranteed. They shall be investigated and verified at the Site by the Contractor before starting the Work. The Contractor shall be held responsible for any damage to, and for maintenance and protection of, existing utilities, fences and remaining structures.

### **3.23.5** Division of Specifications.

For convenience, the Specifications are arranged in various trade sections, but such segregation shall not be considered as limiting the Work of any Subcontractor or trade. The Contractor shall be solely responsible for all Subcontractor arrangements of the Work regardless of the location or provision in the Specifications.

### **3.24 Contractor Responsibility**

The Contractor shall be responsible for all acts and omissions of Contractor's agents, employees, and Subcontractors and their respective agents and employees.

### **3.25 Meetings**

Construction meetings shall be held at the jobsite as scheduled by the County's Project Manager or as requested by the Contractor. Details regarding jobsite meetings will be arranged at the pre-construction conference.

### **3.26 Sanitation and Power Supply**

#### **3.26.1** Sanitation.

Adequate sanitary conveniences of an approved type for the use of persons employed on the Site, and properly secluded from the public observation, shall be provided and maintained by the Contractor in such a manner and at such points as shall be required by the County. These conveniences shall be maintained at all times without nuisance and their use shall be strictly enforced. Upon completion of the Work, they shall be removed from the premises, leaving the premises clean and free from nuisance.

#### **3.26.2** Power Supply.

All electrical power required for construction uses or other purposes shall be provided by the Contractor at Contractor's expense.

### **3.27 Clean Air Act, Clean Water Act, Environmental Protection Agency, Energy Efficiency, and California State Water Resources Control Board**

During the performance of this contract, the Contractor and all Subcontractors shall:

**3.27.1** Comply with all applicable standards, orders, or requirements issued under the Clean Air Act of 1970 (including section 306), including all amendments, and all regulations implementing the Clean Air Act.

**3.27.2** Comply with all applicable standards, orders, or requirements issued under the Clean Water Act of 1972 (including section 508), including all amendments, and all regulations implementing the Clean Water Act.

**3.27.3** Comply with all applicable standards, orders, or requirements issued under Environmental Protection Agency regulations.

**3.27.4** Comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163), including all amendments, and all regulations implementing the Energy Policy and Conservation Act.

**3.27.5** Comply with all requirements of the California State Water Resources Control Board, including the statewide General Permit for Discharges of Storm Waters Associated with Construction Sites (See Order No. 2009-009-DWQ). This includes, but is not limited to, paying all appropriate fees, filing all required documentation, and complying with all the regulations of the State Water Resources Control Board.

### **3.28 Travel Management Policy**

Contractor shall adhere to the County's Travel Management Policy (08-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

### **3.29 California Air Resources Board (CARB) In-Use Off-Road Diesel-Fueled Fleets Regulation Compliance Certification**

This Project is subject to the California Air Resources Board (CARB) approved amendments relating to In-Use Off Road Diesel-Fueled Fleets found at California Code of Regulations Title 13, sections 2449, 2449.1, and 2449.2 (the "Regulations"). The Regulations require a Prime Contractor, bidding on a public works project to be awarded by any public works awarding body, to certify that the Contractor's off-road diesel-fueled fleets comply with CARB regulations. Section 2449(b) includes a list of off-road diesel-fueled fleets subject to these regulations. It is the responsibility of the Contractor to verify if their fleet is subject to these regulations.

Contractor is required to obtain and submit Certificates of Reported Compliance from all subcontractors that are listed in the bid submission.

Contractor shall provide the County its CARB compliance certificates, unless the Contractor confirms that no equipment subject to the regulation will be used to execute the Contract Work. By executing the Contract, Contractor hereby certifies that it is aware of the requirements set forth in Sections 2449, 2449.1, and 2449.2, Title 13, California Code of Regulations and Contractor and its subcontractors shall comply with sections 2449, 2449.1, 2449.2 of Title 13 of the California Code of Regulations, including by providing Certificate(s) of Reported Compliance for In-Use Off-Road Diesel-Fueled Fleets for the fleet selected for the contract and their listed subcontractors, if applicable.

Contractor shall not enter into a contract with a fleet for which it does not have a valid Certificate of Reported Compliance for the fleet and Contractor's listed subcontractors, if

applicable, prior to entering into a new or renewed contract with that fleet. Contractor shall only allow fleets with valid Certificates of Reported Compliance on Contractor's job sites. The Certificates of Reported Compliance received by the Contractor for this Project must be retained for three (3) years after the Project's completion. Upon request by CARB, these records must be provided to CARB within five (5) business days of the request. Between March 1 and June 1 of each year, Contractor must collect new valid Certificates of Reported Compliance for the current compliance year, as defined in Regulation Section 2449(n), from all fleets that have an ongoing contract with the Contractor as of March 1 of that year. Contractor must not write contracts to evade this requirement.

If Contractor discovers that any fleet intending to operate vehicles subject to the Regulation for Contractor does not have a valid Certificate of Reported Compliance, as defined in Regulation section 2449(n), or if Contractor observes any noncompliant vehicles subject to the Regulation on Contractor's job site, then Contractor must report the required information to CARB within the time period contained in in the Regulations.

Upon request by CARB, Contractor must immediately disclose to CARB the name and contact information of each responsible party for all vehicles subject to the Regulation operating at the job site or for Contractor. If applicable, Contractor shall prominently display signage for any project where vehicles subject to the Regulation as provided and within the time period contained in the Regulation.

Situations in which prime contractors or public works awarding bodies, as applicable, are contracting for projects that are considered emergency operations, as defined in section 2449(c)(18), are exempt from the requirements in section 2449(i)(1)-(3), but must still retain records verifying vehicles subject to the regulation that are operating on the emergency operations project are actually being operated on the project for emergency operations only. These records must include a description of the emergency, the address or a description of the specific location of the emergency, the dates on which the emergency operations were performed, and an attestation by the fleet that the vehicles are operated on the project for emergency operations only.

Contractor shall complete and return the "California Air Resources Board (CARB) In-Use Off-Road Diesel-Fueled Fleets Certification of Compliance" form included with the Project Documents.

## **4 ADMINISTRATION OF THE CONTRACT**

### **4.1 County's Project Representative**

The County's Project Manager identified by the County in writing is the County's Project Representative. The County's Project Manager shall serve as a single point transmission of County's instructions and approvals, and receive all information required to be provided by Contractor. County's Project Manager shall be on-site on an as-needed basis to monitor progress, quality of work, and Contract and schedule compliance.



## **4.2 Administration of the Contract**

**4.2.1 Site Visits.** The County's Project Manager will visit the Site at intervals appropriate to the stage of the Contractor's operations to become familiar with the progress and quality of the portion of the Work completed and to determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.

**4.2.2 No Estoppel.** Neither the County nor its Project Manager will be responsible for Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The County and its Project Manager will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. Approval and/or acceptance of all or any portion of the Work shall in no way relieve the Contractor from its obligation to construct each portion of the Work in accordance with the Contract Documents and the County shall not be estopped or otherwise prevented from asserting any claim it might have against the Contractor as a result of any such acceptance or approval.

**4.2.3 Determination of Payment Amounts by Project Manager.** The County's Project Manager will review Contractor's Application for Payment and determine the amount of payment due Contractor.

**4.2.4 Rejection of Work Testing and Inspection.** The County has the authority to reject Work that does not conform to the Contract Documents. Whenever the County considers it necessary or advisable, it will require inspection or testing of the Work in accordance with Paragraph 15.5 below, whether or not such Work is fabricated, installed or completed. However, neither this authority nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the County to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**4.2.5 Submittal Review.** The County will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples.

**4.2.6 Contract Modifications.** The County's Project Manager will prepare Change Orders, Construction Change Directives, and written amendments to the Contract. All Change Orders, Construction Change Directives, and written amendments to the Contract involving changes in the Contract Sum or Contract Time require approval by Director and/or Board.

**4.2.7 Substantial Completion and Project Closeout.** The County's Project Manager will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, review written warranties and related close-out documents required by the Contract and assembled by the Contractor, and will issue a final

authorization for payment upon Contractor's satisfaction of the requirements of the Contract Documents.

### **4.3 Claims and Disputes**

**4.3.1** Definitions. The term "Claim" or "Claims" shall mean a separate demand by the Contractor for: (i) a time extension (ii) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to this Contract and payment of which is not otherwise expressly provided or the Contractor is not otherwise entitled to; or (iii) an amount the payment of which is disputed by the County.

**4.3.2** Notification of Third-Party Claims. County shall provide Contractor with prompt written notice upon County's receipt of any third party claim relating to the Contract.

**4.3.3** Notice and Time Limits on Claims. If the Contractor wishes to make a Claim for an increase in the Contract Sum or an extension of the Contract Time, the Contractor shall give the County written notice thereof within ten (10) calendar days after the occurrence of the event giving rise to such Claim. The written notice must comply with the requirements of this Article 4 and Article 8, if applicable, herein. This notice shall be given by the Contractor before proceeding to execute Work affected by the event, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Article 10 below.

**4.3.4** Resolution. The County will issue a Change Order, a Construction Change Directive, or a written amendment to the Contract, to Contractor within a reasonable period of time after County's approval of any Claim, specifying the additional cost and/or time, if any, approved by County.

**4.3.5** Continuing Contract Performance. Contractor shall not delay or postpone any Work pending resolution of any disputes or disagreements, except as the County and Contractor may otherwise agree in writing. Pending final resolution of a Claim, the Contractor shall proceed diligently with performance of the Contract and the County shall continue to make payments for undisputed Work in accordance with the Contract Documents. In the event of disputed work, County shall have the right to unilaterally issue a Construction Change Directive and Contractor shall continue performance pending resolution of the dispute and shall maintain the accounting and cost data described in Paragraph 7.4 herein.

**4.3.6** Claims for Concealed or Unknown Conditions. The Contractor shall promptly, and before the following conditions are disturbed, notify the County, in writing, of any:

- (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the Site differing from those indicated by information about the Site made available to bidders prior to the deadline for submitting bids.

(3) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

**4.3.6.1** The County shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order or written amendment to the Contract, under the procedures described in the Contract.

**4.3.6.2** In the event that a dispute arises between the County and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

#### **4.3.7** Claims for Additional Cost and/or Time.

**4.3.7.1** General. If Contractor wishes to make a Claim for an increase in the Contract Sum and/or Contract Time, Contractor shall provide written notice within ten (10) calendar days, as provided in Paragraph 4.3.3 herein, before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Article 10. If the Contractor believes additional cost is involved for reasons including, but not limited to: (i) any written interpretation; (ii) a Verbal Change in the Work as more specifically described in Subparagraph 7.5.2 below; (iii) failure of payment by the County; or (iv) any order by the County to stop Work where the Contractor was not at fault, Contractor shall file Claims in accordance with the procedures established herein. Compliance with the notice and Claim submission procedures described in this Paragraph is a condition precedent to the right to commence litigation, file a Government Code Claim, or commence any other legal action. No claim or issues not raised in a timely notice and timely Claim submitted under this Paragraph may be asserted in any Government Code Claim, subsequent litigation, or legal action.

**4.3.7.1.1** The provisions of Section 4.3 and 4.4 constitute a non-judicial claim settlement procedure, and also step one of a two step claim presentment procedure by agreement under Section 930.2 of the California Government Code. Specifically, step one is compliance with this contract claims procedure and filing/administering timely contract claims in accordance with the Contract Documents. Step two is filing a

timely Government Code Section 910 claim in accordance with the California Government Code. Any Government Code Section 910 claims shall be presented in accordance with the Government Code and shall affirmatively indicate Contractor's prior compliance with the claims procedure herein and previous dispositions under the claims procedure. These provisions shall survive termination, breach or completion of the Contract. Contractor shall bear all costs incurred in the preparation and submission of a claim.

**4.3.7.2** Certification of Claim.

(1) Contractor, under penalty of perjury under the laws of the State of California, shall submit with the Claim its and its Subcontractors' certification that:

(a) The Claim is made in good faith;

(b) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(c) The amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

(2) The certification shall be executed by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(3) If a false claim is knowingly submitted (as the terms "claim" and "knowingly" are defined in the California False Claims Act, California Government Code Sections 12650 et seq.) the County will be entitled to the remedies set forth in the California False Claims Act in addition to all other remedies provided by law. The Contractor may be subject to criminal prosecution.

(4) In regard to any Claim or portion of a Claim for Subcontractor work, the Contractor shall fully review said Claim and certify said Claim, under penalty of perjury under the laws of the State of California, to have been made in good faith and in accordance with this Contract.

(5) Failure to furnish certification as required hereinbefore will result in the Contractor waiving its rights to the subject Claim.

**4.3.7.3** Content of Written Notice. Contractor shall waive all rights to assert a Claim for Additional Cost and/or Time unless such notice is given as required in this Section. The written notice shall set forth:

(1) The date of the event or occurrence giving rise to the claim and, if applicable, the date when the event ceased;

- (2) The nature of the event or occurrence and reasons for which the Contractor believes additional cost and/or time will or may be due;
- (3) The quantification of the costs involved together with the accounting and cost data described in Section 7.4 herein;
- (4) A Critical Path Method ("CPM") schedule analysis supporting any request for any additional time; and
- (5) Contractor's plan for mitigating such costs and/or delay.

**4.3.7.4 Back-up Documentation.** In addition to the initial ten (10) day written notice required herein, Contractor shall submit detailed backup documentation for its Claim including, but not limited to, contract provisions, specifications, drawings, Request for Information, correspondence, meeting minutes, and the like, within thirty (30) calendar days from Contractor's initial written notice. Failure to provide either this backup documentation or an explanation acceptable to the County for the cause of the Contractor's delay in submitting this documentation as herein indicated shall constitute Contractor's waiver of any and all rights associated with the Claim. Except where provided by law, the County shall not be liable for special or consequential damages, and claims shall not include special or consequential damages.

**4.3.7.5 Remedies Related to Delays.**

- (1) For Claims relating to extensions of Contract Time, due to Compensable County-Caused delays, as described in Article 8 herein, Contractor may be entitled to an equitable adjustment of the Contract Sum and Contract Time provided Contractor otherwise complies with this Paragraph 4.3.
- (2) For Claims relating to extensions of Contract Time due to Non-Compensable Force Majeure events, as described in Article 8 herein, Contractor may be entitled to an equitable adjustment of the Contract Time, subject to the limitations set forth in Article 8 below, but shall not be entitled to adjustment of the Contract Sum.
- (3) For Claims relating to extensions of the Contract Time due to rain delays/inclement weather, Contractor shall not be entitled to adjustment of the Contract Time unless and until the number of unworkable days due to the effects of rain/inclement weather exceed the number of days set forth in Subparagraph 8.4.1.3 below. In such event, the Contract Time shall be equitably adjusted, but Contractor shall not be entitled to adjustment of the Contract Sum.

## **4.4 Dispute Resolution**

**4.4.1** Claims between the County and the Contractor of \$375,000.00 or less shall be resolved in accordance with the procedures established in Part 3, Chapter 1, Article 1.5 of the California Public Contract Code Sections 20104 et seq.; provided however that California Public Contract Code Section 20104.2(a) shall not supersede the requirements of the Contract Documents with respect to the Contractor's notification to the County of such claim or extend the time for giving of such notice as provided in the Contract Documents.

**4.4.1.1** Pursuant to Public Contract Code Section 20104(c), the current provisions of Article 1.5 of Chapter 1 of Part 3 of the Public Contract code (commencing with Section 20104) dealing with the mediation and arbitration of public works claims are incorporated herein and applicable provisions are set forth below.

Public Contract Code Section 20104 (a)(1): This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b)(1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

Public Contract Code Section 20104.2: For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b)(1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 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.