

SAN BERNARDINO COUNTY

**PROJECT NO. 10.10.1643
PROBATION FIELD OPERATIONS PROJECT**

PROGRESSIVE DESIGN-BUILD CONTRACT

BETWEEN

SAN BERNARDINO COUNTY

AND

HENSEL PHELPS CONSTRUCTION CO.

MAY 19, 2026

EFFECTIVE DATE

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**SAN BERNARDINO COUNTY
PROGRESSIVE DESIGN-BUILD CONTRACT**

PROJECT NO: 10.10.1643

Between

**SAN BERNARDINO COUNTY
620 SOUTH E STREET, SAN BERNARDINO, CA 92415
and**

HENSEL PHELPS CONSTRUCTION CO.

PROBATION FIELD OPERATIONS PROJECT

This contract (this "**Contract**") is entered into by and between San Bernardino County (as defined more fully in Exhibit 1 (Definitions), the "**County**"), and Hensel Phelps Construction Co., a Delaware general partnership (as defined more fully in Exhibit 1 (Definitions), the "**Contractor**").

In consideration of the mutual covenants of the Parties as set out below, the Parties hereby agree as follows:

PART A – PRELIMINARY

1. DEFINITIONS, INTERPRETATION, AND ORDER OF PRECEDENCE

1.1 Definitions

Unless the context otherwise requires, capitalized terms and acronyms used in this Contract have the meanings given in Exhibit 1 (Definitions).

1.2 Interpretation

(a) General

- (i) The Contractor shall interpret this Contract as a whole and read all its parts together. The Contractor shall not take advantage of any apparent non-conformity that may be found in this Contract. Should it appear that any provision of this Contract requires interpretation, the Contractor shall submit an RFI to the County under Section 5.5(b) (Information sharing) requesting an explanation or interpretation as may be necessary, and shall conform to the interpretation Notified to the Contractor by the County or otherwise included in a Modification. Without limiting the Contractor's right to submit a Request for Change as set out under Section 5.5(b)(iii) (Information sharing),

the interpretation of the County in accordance with this Section 1.2(a)(i) is final.

- (ii) The County may make such written additions to, corrections to, or interpretations of this Contract as are necessary to ensure that everything necessary to complete the Work in accordance with the intent of this Contract, or that is customarily performed to complete the Work, is performed by the Contractor in accordance with the intent of this Contract.
- (iii) This Contract is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Contract or some provision of it, or because that Party relies on a provision of this Contract to protect itself. The Parties further acknowledge and agree that each Party has been given the opportunity to independently review this Contract with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of this Contract. Accordingly, this Contract will not be interpreted or construed against the Party preparing it simply as a consequence of their preparing it.

(b) **Contract**

- (i) The individual sections, exhibits, and documents comprising this Contract are complementary and, subject to Article 2 (Term and Phased Work), indicate all aspects of the Work. Anything mentioned or shown in a part of this Contract, which is not mentioned in or shown on another part of the Contract, shall be of like effect as if shown or mentioned throughout the Contract.
- (ii) In the event of any conflict in the terms of this Contract, the resolution of the conflict shall be pursuant to Section 1.3.
- (iii) Subject to the procedure for agreeing to the final terms applicable to the Phase 2 Work as described in Article 2 (Term and Phased Work), the intent of this Contract is to include all items necessary for the commencement, performance, and completion of the Work.

(c) **Standard specifications**

Where any standard specifications are a part of this Contract, the following definitions shall apply:

- (i) all references to the "Engineer" or the "County Engineer", or similar term when referring to the provider of compliance judgment shall mean the County or its Authorized Representative; and
- (ii) all references inconsistent with any terms of this Contract, including to measurement and payment in the standard specifications, shall not apply.

Measurement and payment shall be deemed as references to equivalent provisions in this Contract.

(d) **Reference Standards**

Goods and workmanship specified by the number, symbol, or title of a Reference Standard shall comply with the latest edition or revision and amendments and supplements in effect on the Applicable Proposal Date except where a different edition is specified. All Third Party standards referenced in this Contract are incorporated into this Contract as an integral part of this Contract unless specifically marked otherwise. In case of a conflict between the various standards referenced in this Contract, the more stringent shall govern unless otherwise indicated.

(e) **Headings**

The various topical headings contained in this Contract are intended for convenience only and do not affect the meaning or interpretation of this Contract or any of its provisions.

(f) **Word construction**

In this Contract unless otherwise expressly stated:

- (i) the singular includes the plural and vice versa (as the context may require);
- (ii) references to any Applicable Law include all statutory or regulatory provisions consolidating, amending, or replacing the Applicable Law referred to;
- (iii) the word "including", "includes", and "include" shall be deemed to be followed by the words "without limitation";
- (iv) reference in the main body of this Contract, or in an Exhibit, to an Article, Section, part, subsection, or clause is to the Article, Section, part, subsection, or clause of the main body of this Contract, or of that Exhibit (as applicable);
- (v) subject to Section 1.2(f)(iv), references to Articles, Sections, subsections, clauses, forms, paragraphs, subparagraphs, Exhibits, attachments, appendices, or schedules are to the Articles, Sections, subsections, clauses, forms, paragraphs, subparagraphs, Exhibits, attachments, appendices, or schedules in or attached to this Contract;
- (vi) words such as "herein", "hereof", and "hereunder" shall refer to the entire document in which they are contained, and not to any particular provision unless the reference is to the specific provision;
- (vii) words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings;

- (viii) references to Persons include their permitted successors and assigns and, in the case of a Government Entity, entities succeeding to their respective functions and capacities;
- (ix) words of any gender shall include each other gender where appropriate;
- (x) this Contract shall be read as a whole, and lists contained in this Contract defining the Work shall not be deemed all-inclusive;
- (xi) the word "or" is not exclusive;
- (xii) all Notices, "notices", "requests", "directives", and other communications are required to be in writing, and all references to Notices, "notices", "requests", "directives", and other communications, by whatever term used, shall be deemed to be followed by the words "in writing" or preceded by the word "written" and delivered in accordance with Article 39 (Notices);
- (xiii) references to the Contractor "submitting", "providing", "delivering" or "furnishing" or being required to "submit", "provide", "deliver" or "furnish" a notice, Notice, Contractor-Furnished Document, or other communication or information, shall be deemed to be a reference to delivery of that notice, Notice, Contractor-Furnished Document or other communication or information to the County in accordance with Article 39 (Notices);
- (xiv) references to this Contract or any other contract, instrument, or document is to this Contract or such other contract, instrument, or document as amended or supplemented from time to time;
- (xv) references to this Contract or any other contract includes all exhibits, schedules, forms, appendices, addenda, attachments, or other documents attached to or otherwise expressly incorporated in this Contract or any such other contract (as applicable);
- (xvi) an obligation to do something "promptly" means an obligation to do so as soon as the circumstances permit, avoiding any delay;
- (xvii) "shall" when stated is to be considered mandatory;
- (xviii) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" mean "to and including";
- (xix) in reference to Work performed by the Contractor, "provide" shall mean submit, furnish, or install complete in place, unless directed otherwise;
- (xx) references to the Work, Contractor-Furnished Documents, or the Contractor Commitments; or any other document or item, or any part of any of them being or remaining "fit for its purpose" or "fit for its intended purpose"; or as having an intended use, (or any similar reference) will be read as referring

to the purpose, intended purpose, or intended use stated in, contemplated by or reasonably ascertainable from this Contract, including the Project Requirements;

- (xxi) references to a number of Days or other period of time from issuance of or the date of, a Notice to Proceed shall be deemed to be a reference to a number of Days or other period of time from the Commencement Date for that Notice to Proceed; and
- (xxii) references to "third party" appearing in lower case shall mean a Person that is not a Party to this Contract.

(g) **Default language**

All Notices, information, communication, documentation, and submittals, including all Contractor-Furnished Documents, delivered in accordance with this Contract or otherwise in connection with the Project shall be in the English language.

1.3 **Order of precedence**

- (a) Except as otherwise expressly provided in this Section 1.3, if there is any conflict, ambiguity, or inconsistency between this Contract (including all Exhibits), the order of precedence will be as follows, from highest (commencing with paragraph (i)) to lowest (ending with paragraph (vi)):
 - (i) the terms of Exhibit 4 (Regulatory Requirements);
 - (ii) the terms of the main body of this Contract and of Exhibit 1 (Definitions);
 - (iii) the terms of the Exhibits to this Contract, other than Exhibits 1 (Definitions), 3 (Project Requirements), 4 (Regulatory Requirements), and 8 (Contractor Commitments);
 - (iv) the terms of Exhibit 3 (Project Requirements), other than the Incorporated Documents;
 - (v) the terms of the Incorporated Documents; and
 - (vi) the terms of Exhibit 8 (Contractor Commitments),

in each case, as amended or supplemented from time to time in accordance with this Contract.

- (b) If there is any conflict, ambiguity, or inconsistency between any of the provisions in this Contract having the same order of precedence (including all Exhibits), the more stringent requirement will prevail.
- (c) An amendment, modification, or change to this Contract shall take precedence over the term it amends and with respect to the other terms of this Contract, will

take its precedence from the term it amends in accordance with this Section 1.3. All other documents and terms and conditions not affected by the amendment, modification, or change shall remain unchanged.

- (d) If the Contractor Commitments include statements, provisions, concepts, or designs that can reasonably be interpreted as offering to:
 - (i) provide higher quality Goods or materials than otherwise required by the main body of this Contract or the other Exhibits to this Contract; or
 - (ii) perform services or meet standards in addition to or better than otherwise required by the main body of this Contract or the other Exhibits to this Contract,

the Contractor's obligations under this Contract include compliance with all such statements, provisions, concepts, and designs of those Contractor Commitments.

- (e) Additional or supplemental details or requirements in a provision of this Contract with lower priority will be given effect, except to the extent that they irreconcilably conflict with any provision of this Contract with higher priority.
- (f) Without limiting any specific requirement under the Statement of Work to review the Project Requirements:
 - (i) if the Contractor or any of its Subcontractors discovers a conflict between any Project Requirements, the Contractor shall deliver an RFI to the County's Authorized Representative as soon as practicable from the time of discovery, citing the specific provisions that are in conflict. Upon receipt of such RFI, the County may do one or both of the following:
 - (A) deliver to the Contractor a Notice with instruction or interpretation specific to the context of the RFI, based upon the general terms of conflict interpretation in Sections 1.3(a) to 1.3(e); or
 - (B) revise and re-issue the conflicting Project Requirements in question under a Modification, to remove any document conflict and potential misinterpretation in the future.
 - (ii) If the County or the Contractor discover (or a Subcontractor makes the Contractor aware of) a conflict between any Contractor Commitments, the Party that discovered the conflict shall Notify the other as soon as practicable from the time of discovery, citing the specific Contractor Commitments that are in conflict and:
 - (A) if the County delivers such a Notice, the Contractor must respond within five days of receipt, with its interpretation, based upon the general guidelines for conflict interpretation set out in this Section 1.3;

- (B) if the Contractor delivers such a Notice, the Contractor must include its interpretation, based upon the general guidelines for conflict interpretation set out in this Section 1.3 in its Notice to the County; and
 - (C) the County may revise and re-issue the conflicting Contractor Commitments in question under a Modification, to remove any document conflict and potential misinterpretation in the future.
- (iii) If a conflict between any Project Requirements or any Contractor Commitments is discovered during the performance of the Phase 1 Work and relates only to the Phase 2 Work, and the County elects to revise and re-issue the conflicting Project Requirements or Contractor Commitments under this Section 1.3(f), the County may elect by Notice to defer such revision and re-issuance to the execution of the Phase 2 Supplement (or a Modification for an Early Works Package), in which case the Contractor shall prepare its Phase 2 Proposal (or the applicable Early Works Package) on the basis of the intended revision.

1.4 Discretions

- (a) Except as otherwise expressly provided in this Contract, all determinations, consents, waivers, or approvals of the County (including any conditions to such determinations, consents, waivers, or approvals) will be made in the County's sole discretion.
- (b) Except as otherwise expressly provided in this Contract, all determinations, consents, waivers, or approvals of the Contractor under this Contract must not be unreasonably withheld, conditioned, or delayed.

2. TERM AND PHASED WORK

2.1 Term and general obligations

(a) Term

Subject to Section 2.2 (Phased Work), this Contract (and all of the rights and obligations under this Contract) will come into effect on the Effective Date and continue until the Contract End Date (the "**Term**").

(b) Environmental Approvals

- (i) As described in Section 2.2 (Phased Work), the Work under this Contract will be phased and subject to a Notice to Proceed for the Phase 1 Work and Notice(s) to Proceed for the Phase 2 Work. The County will not proceed, nor issue any Notice to Proceed, nor otherwise permit the Contractor to proceed, with any Phase 2 Work, the development of any Construction Documents, or the performance of any other activities that would prejudice the

Environmental Review Process, until after the applicable Environmental Approvals have been issued.

- (ii) Performance by either Party of its obligations under this Contract shall not in any manner limit the independent evaluation and full discretion that the County and any responsible and/or resource agencies will exercise in conducting the Environmental Review Process, preparing environmental analyses for the Project, and evaluating alternatives to the Project, nor does it predetermine the outcome of the Environmental Review Process.
- (iii) The County (in conjunction with any responsible and/or resource agencies) retains exclusive control and decision-making authority over the identification of preferred alternatives for the Project for the purpose of the Environmental Review Process.
- (iv) Nothing in this Contract commits the County to any alternative evaluated as part of the Environmental Review Process.
- (v) The Contractor shall have no right or obligation to perform, and is expressly prohibited from performing, services that would violate conflict of interest rules regarding the preparation, review, revision, and decisions on the scope and content of the draft and final environmental review documents. Without limiting the generality of the foregoing sentence, the Contractor will not prepare any documentation or have any decision-making responsibility in relation to the Environmental Review Process for the Project other than responding to a Request for Information about the Project and possible mitigation actions, including constructability information.
- (vi) In the event that the Environmental Review Process does not result in selecting a build alternative, the County may in its sole discretion exercise its rights under Section 2.3(e).

2.2 Phased Work

(a) Performance of the Work

The Contractor shall perform the Work in accordance with this Contract. Subject to Section 2.2(c)(ii) (Phase 2), each Phase of the Work may only commence if and when the County issues a fully executed Notice to Proceed for the Work to be performed under that Phase in accordance with Section 2.4 (Notices to Proceed).

(b) Phase 1

Upon and following issuance of the Notice to Proceed for the Phase 1 Work, the Contractor shall perform the Phase 1 Work as required under this Contract.

(c) **Phase 2**

- (i) Subject to and following execution of a Phase 2 Supplement and issuance of the Notice to Proceed for the Phase 2 Work, the Contractor shall perform the Phase 2 Work as required under this Contract.
- (ii) In accordance with this Article 2, the County may authorize the performance of Early Works Packages for certain elements of the Phase 2 Work to be performed concurrently with the Phase 1 Work by executing a related Modification and issuing interim Notices to Proceed in advance of the full Notice to Proceed for the Phase 2 Work.

2.3 Phase 2 Proposal and Early Works Package Proposals

(a) **Early Works Packages**

- (i) Each submittal of an Early Works Package Proposal to the County under this Section 2.3 is subject to the satisfaction (or waiver by the County) of each of the conditions set out in Part A (*Conditions to submittal of an Early Works Package Proposal*) of Exhibit 11 (Form of Phase 2 Proposal), as determined by the County in its sole discretion.
- (ii) The Contractor must keep the County informed on the progress made in satisfying the conditions to submittal of an Early Works Package Proposal for any Identified Early Works Package. The Contractor must and the County may, issue a Notice to the other Party when it considers all conditions satisfied (or waived by the County) with respect to submittal of an Early Works Package Proposal for any Identified Early Works Package.
- (iii) Within 40 Days of the County's determination that all conditions set out in Part A (*Conditions to submittal of an Early Works Package Proposal*) of Exhibit 11 (Form of Phase 2 Proposal) have been satisfied (or waived by the County) with respect to any Identified Early Works Package, the Contractor must prepare and submit the applicable Early Works Package Proposal to the County.
- (iv) For each and any Identified Early Works Package, the Contractor must diligently progress the satisfaction of the conditions set out in Part A (*Conditions to submittal of an Early Works Package Proposal*) of Exhibit 11 (Form of Phase 2 Proposal) and the preparation of an Early Works Package Proposal. If any designated dates for submittal of an Identified Early Works Package are set out under the Work Completion Schedule then, subject to any Contractor entitlement to relief for an Excusable Delay or Compensable Delay and without limiting the Contractor's obligation under Section 2.3(a)(iii), the Contractor must use its best efforts to satisfy or procure the satisfaction of the conditions set out in Part A (*Conditions to submittal of an Early Works Package Proposal*) of Exhibit 11 (Form of Phase

2 Proposal) and to submit an Early Works Package Proposal to the County by such designated dates.

- (v) Subject to Section 2.3(a)(i), at any time during Phase 1 and prior to any execution of the Phase 2 Supplement:
 - (A) the Contractor may submit an Early Works Package Proposal to the County for the performance of a part of the Phase 2 Work concurrent with the performance of the Phase 1 Work, where such part is not already defined as an Identified Early Works Package; and
 - (B) the County may request by Notice that the Contractor submit an Early Works Package Proposal to the County for the performance of a part of the Phase 2 Work concurrent with the performance of the Phase 1 Work, where such part is not already defined as an Identified Early Works Package, in which case the Contractor shall submit that Early Works Package Proposal within 30 days of the County's request (or such other period agreed by the Parties).
- (vi) Upon submittal to the County by the Contractor, an Early Works Package Proposal will constitute an offer that is binding on the Contractor for the validity period stated in that Early Works Package Proposal.
- (vii) Each Early Works Package Proposal submitted to the County under this Section 2.3(a) shall:
 - (A) comply with the requirements of Section 2.3(c); and
 - (B) be reviewed in accordance with Section 2.3(d),
in each case to the extent applicable (as determined by the County) to the Early Works Package.
- (viii) Each Early Works Package Proposal that is agreed upon by the County in accordance with this Article 2 shall be deemed a sub-set and a part of, the build-up of the Phase 2 Proposal, and any Phase 2 Supplement agreed upon and executed shall be deemed to incorporate any Modifications for Early Works Packages.
- (ix) If an Early Works Package Proposal is not agreed upon by the County in accordance with this Article 2, the scope of the Early Works Package must be included within the Phase 2 Proposal submitted by the Contractor under this Article 2, unless the County issues a Notice or the Parties otherwise agree to delete the scope of the Early Works Package from the Phase 2 Work for the purposes of the Phase 2 Proposal submitted by the Contractor under this Article 2, in which case such deletion of that scope will be documented in any Phase 2 Supplement subsequently executed under the terms of this Contract. If the scope of an Early Works Package is deleted

from the Phase 2 Work, the County may, in its sole discretion, proceed with any other action as the County deems appropriate for delivery of that Early Works Package, including soliciting from, negotiating with, or awarding a contract to any other Person for any part of that Early Works Package.

(b) **Submittal of a Phase 2 Proposal**

- (i) Submittal of the Phase 2 Proposal to the County under this Article 2 is subject to the satisfaction (or waiver by the County) of each of the conditions set out in Part B (*Conditions to submittal of the Phase 2 Proposal*) of Exhibit 11 (*Form of Phase 2 Proposal*), as determined by the County in its sole discretion.
- (ii) The Contractor must keep the County informed on the progress made in satisfying the conditions to submittal of the Phase 2 Proposal. The Contractor must and the County may, issue a Notice to the other Party when it considers all conditions satisfied (or waived by the County) with respect to the submittal of the Phase 2 Proposal.
- (iii) Within 60 Days of the County's determination that all conditions set out in Part B (*Conditions to submittal of the Phase 2 Proposal*) of Exhibit 11 (*Form of Phase 2 Proposal*) have been satisfied (or waived by the County), the Contractor must prepare and submit its Phase 2 Proposal to the County.
- (iv) The Contractor must diligently progress the satisfaction of the conditions set out in Part B (*Conditions to submittal of the Phase 2 Proposal*) of Exhibit 11 (*Form of Phase 2 Proposal*) and the preparation of the Phase 2 Proposal. If a designated date for submittal of a Phase 2 Proposal is set out under the Work Completion Schedule then, subject to any Contractor entitlement to relief for an Excusable Delay or Compensable Delay and without limiting the Contractor's obligation under Section 2.3(b)(iii), the Contractor must use its best efforts to satisfy or procure the satisfaction of the conditions set out in Part B (*Conditions to submittal of the Phase 2 Proposal*) of Exhibit 11 (*Form of Phase 2 Proposal*) and to submit the Phase 2 Proposal to the County by such designated date.
- (v) Upon submittal to the County by the Contractor, the Phase 2 Proposal will constitute an offer that is binding on the Contractor for the validity period stated in that Phase 2 Proposal.

(c) **Form of the Phase 2 Proposal**

- (i) The Phase 2 Proposal must be in the form set out in Part C (*Form of Phase 2 Proposal*) of Exhibit 11 (*Form of Phase 2 Proposal*) and include:
 - (A) the proposed Phase 2 Contract Price, together with all required supporting forms and information for that Phase 2 Contract Price;

- (B) proposed updates to the Baseline CPM Schedule to incorporate the Phase 2 Work (which updates shall be consistent with any Schedule for the Phase 2 Work agreed upon by the Parties during the performance of the Phase 1 Work);
- (C) subject to Section 13.1 (Subcontracting), an updated list of the Major Subcontractors proposed to perform part of the Phase 2 Work, and a report detailing how the Phase 2 Proposal complies with the Subcontractor Bidding and Selection Plan Approved by the County;
- (D) the proposed organization chart for Phase 2 and a description of any additions or changes to the Key Personnel, if any, in the form and with the supporting information required under Section 5.3 (Key Personnel and other personnel);
- (E) a report that summarizes:
 - (aa) by reference to each of the items set out in Section 3 of Part B (Conditions to submittal of the Phase 2 Proposal) of Exhibit 11 (Form of Phase 2 Proposal), the agreed assumptions upon which the Phase 2 Proposal is based; and
 - (bb) the decisions during the Phase 1 Work for risk reduction and/or elimination and the associated value of each decision in terms of cost and savings in direct relationship with the Phase 2 Work;
- (F) the Value Engineering Report;
- (G) an updated Contractor-Furnished Document Listing & Schedule containing all Construction Documents, prepared and delivered in accordance with Section 12.1(d)(iii) (Contractor-Furnished Document Listing & Schedule);
- (H) a completed certification of the Phase 2 Proposal in the form set out in Part C (Form of Phase 2 Proposal) of Exhibit 11 (Form of Phase 2 Proposal);
- (I) a completed Certificate of Current Cost or Pricing Data;
- (J) the completed prescribed certifications required under Part C (Form of Phase 2 Proposal) of Exhibit 11 (Form of Phase 2 Proposal) in the form required under Exhibit 9 (Forms of Prescribed Certifications);
- (K) unless the Parties have agreed upon or the County has directed another basis of calculation for Delay Compensation for the Phase 2 Work, the Delay Compensation rate for Phase 2;

- (L) any other document, report, or information required under the terms of this Contract to be submitted with or as part of the Phase 2 Proposal; and
 - (M) such other supporting documentation as may be reasonably requested by the County.
- (ii) Any Phase 2 Proposal must be prepared on the basis that it will be considered to contain commitments for which the Contractor will be held responsible in accordance with the terms of this Contract if a Phase 2 Supplement is agreed upon and executed. Portions of the Phase 2 Proposal, as agreed upon under this Article 2 may be attached exhibits, as provided in this Contract or at the County's discretion, and incorporated into this Contract pursuant to a Phase 2 Supplement, and if attached will become binding Contractor Commitments under this Contract.
- (iii) Any Phase 2 Proposal must be prepared:
- (A) in accordance with the pricing methodology in Part A (*Principles for estimating cost of Phase 2 Work*) of Exhibit 16 (*Principles for estimating and calculation of cost of Changes*), together with the Cost Model and any other materials developed as part of the Phase 1 Work, including the Estimating Methodology Report and OPCs and other cost estimates developed during Phase 1;
 - (B) consistent with the agreed assumptions, reports, and plans agreed upon or directed under Section 2.3(b);
 - (C) so as to maximize the use of open and transparent procurement processes in the performance of the Phase 2 Work;
 - (D) so as to assist the County to determine whether it is receiving value for money and that any payment to the Contractor with respect to the Phase 2 Work is fair and reasonable and is calculated in a manner that is transparent and avoids double-counting;
 - (E) so as to manage construction impacts in the performance of Work;
 - (F) so as to avoid any adverse safety impacts in the performance of Work on the Worksite; and
 - (G) in the form of an offer capable of complete cost analysis and acceptance by the County.
- (iv) Notwithstanding the cooperation and coordination performed by the County during the performance of the Phase 1 Work, including participation in meetings and participation contemplated in the Project Requirements, and any review, comment, or direction by or other action or inaction of the County,

the Contractor remains fully responsible for the preparation and submittal of the Phase 2 Proposal to the County.

(d) **Review of the Phase 2 Proposal**

- (i) The Contractor must attend any meetings convened by the County to present and describe the Phase 2 Proposal to the County, any Owner's Estimator (if invited by the County), and other affected Persons invited by the County to attend the meeting.
- (ii) If the Phase 2 Proposal submitted by the Contractor under this Article 2 including after any discussions or negotiation under this Contract, is acceptable to the County in its sole discretion, the County will Notify the Contractor of its acceptance, which may be conditional on any Board or other internal approvals or any Third Party approvals required to execute the Phase 2 Supplement, following which:
 - (A) within such time period following the County's Notice of acceptance as is stipulated by the County in its Notice of acceptance (or such longer period required to obtain any Board or other internal approvals or any Third Party approvals), the Parties will modify and restate this Contract by execution of a Phase 2 Supplement in accordance with Exhibit 15 (Form of Phase 2 Supplement) to incorporate the Phase 2 Proposal as accepted by the County; and
 - (B) subject to all other conditions under Section 2.4(c) being satisfied, the County will issue a Notice to Proceed for the Phase 2 Work.
- (iii) If the County, in its sole discretion, Notifies the Contractor that the Phase 2 Proposal submitted by the Contractor under this Article 2, is not acceptable (in whole or in part) to the County and that negotiations shall commence, or if the County has not issued a Notice of acceptance under this Section 2.3(d) nor issued a Notice of determination under Section 2.3(e) within 60 Days of delivery of the Phase 2 Proposal, the Contractor must enter into negotiations with the County in good faith and in accordance with the following:
 - (A) such negotiations may extend to the full scope of the Phase 2 Proposal or only those parts identified by the County as not being acceptable;
 - (B) such negotiations shall not limit or restrict the County's right to request that the Contractor submit an Early Works Package Proposal for any parts of the Phase 2 Proposal that are accepted by the County in accordance with Section 2.3(a)(v);
 - (C) such negotiations may include a further process of risk and value engineering identification and quantification;

- (D) such negotiations must include the Contractor Representative;
 - (E) such negotiations may consider any modifications to the Phase 2 Proposal proposed by the County, including any modifications to the assumptions upon which the Phase 2 Proposal was based and any modifications increasing or decreasing the scope of the Phase 2 Work under the Phase 2 Proposal;
 - (F) the Contractor must provide such further information as required by the County in accordance with Section 5.5 (Information sharing) to enable the County to assess and negotiate the Phase 2 Proposal;
 - (G) the Contractor must provide appropriately knowledgeable personnel to participate in proposal review meetings to explain the Phase 2 Proposal or particular elements of it;
 - (H) the Parties shall maintain a record of negotiation and comply with any other negotiation protocols reasonably established by the County, including for matters such as the manner in which meetings, negotiations, decisions, and staff liaison will be managed and related timelines;
 - (I) the Contractor may, and if requested by the County, the Contractor must re-submit its Phase 2 Proposal in accordance with this Article 2 to reflect agreed positions reached under such negotiations, in which case this Section 2.3(d) shall apply again to the review of the re-submitted Phase 2 Proposal; and
 - (J) the County may, following any negotiation, accept the Phase 2 Proposal under Section 2.3(d)(ii) as agreed upon under the negotiation and recorded in the record of negotiation, without requiring re-submittal of the Phase 2 Proposal.
- (e) **Failure to agree to a Phase 2 Supplement**
- (i) Without limiting the County's rights under Articles 29 (Termination for Convenience) and 30 (Termination for Contractor Default), the County may by Notice to the Contractor and in its sole discretion, make a determination:
 - (A) not to proceed with requiring the Contractor to submit a Phase 2 Proposal, including as a result of a delay or failure in the satisfaction of the conditions under Section 2.3(b); or
 - (B) to reject the Phase 2 Proposal and not proceed to negotiate, agree upon, or execute a Phase 2 Supplement,

whether such determination is made without entering into negotiations, during negotiations, or at the conclusion of any negotiations held in accordance with this Section 2.3.

- (ii) Following delivery of a Notice under Section 2.3(e)(i) or a failure by either Party to execute a Phase 2 Supplement after acceptance of the Phase 2 Proposal in accordance with Section 2.3(d)(ii):
 - (A) the Contractor shall continue to perform and complete the Phase 1 Work (other than that part of the Phase 1 Work requiring preparation of a Phase 2 Proposal) and any Early Works Packages authorized under a Modification (together, the "**Committed Work**") and any other obligations under this Contract relating to or arising from the Committed Work, but shall be released from any obligation to perform that part of the Phase 2 Work that is not Committed Work;
 - (B) the County shall continue to perform any obligations relating to or arising from the Committed Work, but shall be released from all obligations relating to or arising from that part of the Phase 2 Work that is not Committed Work;
 - (C) upon the Contracting Officer's written order by Notice, the Contractor shall assign to the County in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor in and to outstanding orders and Subcontracts for: (aa) the Committed Work; and (bb) the Design Support During Construction, whether or not forming part of the Committed Work;
 - (D) upon completion and acceptance of the Committed Work in accordance with this Contract and of the Contractor's obligations under this Section 2.3(e), this Contract will expire in accordance with Section 2.1 (Term and general obligations);
 - (E) title to the Committed Work will remain vested in or pass to the County in accordance with Article 33 (Intellectual Property; Ownership; Indemnification), and the Committed Work and any Contractor-Furnished Documents which are provided to the County by the Contractor or Subcontractors pursuant to the Committed Work may be used and disclosed by the County in accordance with Article 33 (Intellectual Property; Ownership; Indemnification) and Section 40.10 (Survival of obligations);
 - (F) the County may, in its sole discretion, proceed with any other action as the County deems appropriate for delivery of the Phase 2 Work that is not Committed Work, including soliciting from, negotiating with, or awarding a contract to any other Person for any part of the Phase 2 Work that is not Committed Work; and

- (G) the County may, in its sole discretion, decide not to proceed with the Phase 2 Work that is not Committed Work or any part of it.
- (iii) Without limiting Section 2.3(a)(ix), the County may, in its sole discretion, elect by issuing a Notice or the Parties may otherwise agree, to delete elements of the Phase 2 Work from the scope of this Contract. The County may make such election to delete a part of the Phase 2 Work, or the Parties may agree on such deletion of a part of the Phase 2 Work, either prior to submittal of a Phase 2 Proposal or after submittal of a Phase 2 Proposal where the Phase 2 Proposal is accepted and agreed in part but not in full, and in either case, such deletion of that scope will be documented in any Phase 2 Supplement executed under the terms of this Contract. If a part of the Phase 2 Work is deleted from the scope of this Contract under this Section 2.3(e)(iii), the County may, in its sole discretion, proceed with any other action as the County deems appropriate for delivery of that deleted scope, including soliciting from, negotiating with, or awarding a contract to any other Person for any part of that deleted scope.
- (iv) The Contractor acknowledges and agrees that:
 - (A) nothing in this Contract may be construed as an indication or representation to the Contractor by the County that the County will accept and proceed with the Phase 2 Work or any Early Works Package;
 - (B) the County will, in its sole discretion, determine:
 - (aa) whether or not it is in the interest of the County and the general public for the County to continue to work with the Contractor after completion of the Phase 1 Work;
 - (bb) whether or not to proceed with requiring that the Contractor submit a Phase 2 Proposal;
 - (cc) whether or not to accept any Early Works Package Proposal or execute a Modification for an Early Works Package; and
 - (dd) whether or not to accept the Contractor's Phase 2 Proposal or execute the Phase 2 Supplement;
 - (C) the Contractor must not mobilize its resources or establish any accommodation, facilities, or presence on any part of the Worksite, unless such mobilization is permitted under Section 6.2(c) (Access to the Worksite) or expressly directed by the County where the Parties execute the Phase 2 Supplement (or Modification for an Early Works Package) and the County issues a Notice to Proceed for the Phase 2 Work (or applicable Early Works Package) under Section 2.4 (Notices to Proceed);

- (D) the Contractor is not entitled to claim or seek payment from the County of any amount by way of Loss as a result of the County making a determination not to proceed with requiring submittal of a Phase 2 Proposal, not to execute a Phase 2 Supplement (or any Modification for an Early Works Package), not to authorize the Contractor to perform the Phase 2 Work (in whole or part) or to award the Phase 2 Work (in whole or in part) to another Person or taking any other action or exercising any other right under this Section 2.3(e); and
- (E) the County's rights under this Section 2.3(e) are without prejudice to its rights and remedies for a Contractor Default, including where such Contractor Default results in a failure to agree to a Phase 2 Supplement.

2.4 Notices to Proceed

(a) Contractor's obligations

- (i) Concurrently with execution of this Contract, any Modification for an Early Works Package, or the Phase 2 Supplement (as applicable), the Contractor shall deliver to the County all required Performance Bonds and Payment Bonds and insurance certificate(s) and documentation in accordance with this Contract.
- (ii) All other obligations of the Contractor under this Section 2.4 must be completed by the Contractor in a timely fashion, and completed in such a manner that there is no adverse impact to the designated dates under the Work Completion Schedule.
- (iii) If the Contractor fails to perform its obligations under this Section 2.4 and delays the County's issuance of a Notice to Proceed, the Contract Time shall be reduced on a day for day basis, for each day the Contractor fails to complete its obligations under this Section 2.4.

(b) Notice to Proceed for the Phase 1 Work

- (i) Except as specifically authorized in writing by the Contracting Officer, the Contractor shall not perform or permit performance of any part of the Phase 1 Work until the Commencement Date stated in the Notice to Proceed for the Phase 1 Work.
- (ii) The Contracting Officer will issue the Notice to Proceed for the Phase 1 Work and the Commencement Date for the Phase 1 Work will be no later than 30 Days after the following conditions have been satisfied (not necessarily in this order):
 - (A) the County's receipt of the Contractor's Performance Bonds and Payment Bonds and required insurance certificates and

documentation for the Phase 1 Work in accordance with this Contract, and the Contractor's completion of any other conditions precedent to the issuance of the Notice to Proceed for the Phase 1 Work under this Contract;

- (B) the Contractor has designated the initial Contractor Representative in accordance with Section 5.2(c) (Contractor Representative);
- (C) the Contractor has obtained any and all Governmental Approvals (other than any County-Provided Approvals) required to commence the performance of the Phase 1 Work; and
- (D) the Contractor has acknowledged that the County has delivered the Incorporated Documents and Incorporated Manuals to the Contractor.

(c) **Notice to Proceed for the Phase 2 Work**

- (i) Subject to Sections 2.4(c)(iii) and 2.4(c)(iv), and except as otherwise specifically authorized in writing by the Contracting Officer, the Contractor shall not perform or permit the performance of any part of the Phase 2 Work until the Commencement Date stated in the Notice to Proceed for the Phase 2 Work.
- (ii) The Contracting Officer will issue the Notice to Proceed for the Phase 2 Work, and the Commencement Date for the Phase 2 Work will be no later than ten Days after the following conditions have been satisfied (not necessarily in this order):
 - (A) the Parties have agreed upon and executed the Phase 2 Supplement;
 - (B) the County's receipt of the Contractor's Performance Bonds and Payment Bonds, required insurance certificates, and documentation for the Phase 2 Work in accordance with this Contract, and the Contractor's completion of any other conditions precedent to the issuance of the Notice to Proceed for the Phase 2 Work under this Contract; and
 - (C) the Contractor has obtained any and all Governmental Approvals (other than any County-Provided Approvals) required to commence the performance of the Phase 2 Work.
- (iii) Subject to Section 2.4(c)(iv) and except as otherwise specifically authorized in writing by the Contracting Officer, the Contractor shall commence performance of that part of the Phase 2 Work included in an Early Works Package on the Commencement Date stated in a Notice to Proceed for that Early Works Package. The Contracting Officer will issue a Notice for Proceed for an Early Works Package, and the Commencement Date for that

Early Works Package will be no later than ten Days after the following conditions have been satisfied (not necessarily in this order):

- (A) the Early Works Package has been authorized under a Modification;
 - (B) the County's receipt of the Contractor's Performance Bonds and Payment Bonds and required insurance certificates for that Early Works Package in accordance with this Contract, and the Contractor's completion of any other conditions precedent to the issuance of the Notice to Proceed for the that Early Works Package under this Contract; and
 - (C) the Contractor has obtained any and all Governmental Approvals (other than any County-Provided Approvals) required for the performance of that Early Works Package.
- (iv) The Contractor will not perform or permit the performance of any Construction Work unless and until the conditions under Section 14.3 (Approved for Construction) have been satisfied.

3. **REPRESENTATIONS AND WARRANTIES**

The Contractor represents, warrants, and covenants for the benefit of the County that:

(a) **Status**

If the Contractor is a corporation, limited partnership, general partnership, or joint venture, it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation, has full power and authority to own and operate its business and properties and perform the Work, and is qualified to do business within the State.

(b) **Contractor and Subcontractor qualifications**

The Contractor and all of its Subcontractors are (or will be prior to the issuance of the applicable Notice to Proceed in the case of the Phase 2 Work or any Early Works Package) and will remain fully experienced and properly qualified to perform the Work, and are (or will be prior to the issuance of the applicable Notice to Proceed in the case of the Phase 2 Work or any Early Works Package), and will remain properly licensed, equipped, organized, and financed to perform the Work and shall perform the Work in accordance with this Contract and in accordance with professional standards of skill, care, and diligence adhered to under Good Industry Practice.

(c) **Authorization and execution**

The Person executing this Contract on behalf of the Contractor has been duly authorized to execute and deliver each such document on behalf of the Contractor, and this Contract has been duly executed and delivered by the Contractor.

(d) **Enforceability**

This Contract constitutes a legal, valid, and binding obligation of the Contractor, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(e) **No contravention**

The execution, delivery, and performance by the Contractor of this Contract does not conflict with or result in a default under or a violation of:

- (i) the Contractor's organizational documents;
- (ii) any other material agreement or instrument to which the Contractor is a party or which is binding on the Contractor or any of its assets; or
- (iii) any Applicable Law.

(f) **Control of employees and Subcontractors**

The Contractor has and will maintain complete control of its personnel and its Subcontractors, and has complied with and shall comply with its obligations under Sections 5.3 (*Key Personnel and other personnel*) and 13.1 (*Subcontracting*).

(g) **Review of information and inspection of Worksite**

The Contractor has, in accordance with Good Industry Practice:

- (i) reviewed all of the information provided in this Contract and the Reference Documents; and
- (ii) inspected and evaluated the Worksite and surrounding locations to the extent the Contractor deems necessary or advisable for performing the Phase 1 Work, and will inspect and evaluate the Worksite and surrounding locations prior to the Applicable Proposal Date for the Phase 2 Work to the extent the Contractor deems necessary or advisable for performing the Phase 2 Work, and otherwise in accordance with the requirements of this Contract, including inspecting and evaluating:
 - (A) constraints related to the Design Work;
 - (B) the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Worksite, including review of this Contract and the Reference Documents;
 - (C) conditions affecting transportation, disposal, handling, and storage of materials, Goods, and Equipment;

- (D) the availability of labor, water, electric power, and roads;
- (E) uncertainties of weather or physical conditions at the Worksite;
- (F) the conformation and conditions of the ground;
- (G) the character of Equipment and facilities needed for the performance of the Work; and
- (H) conditions affecting security and protection of materials, Goods, Equipment, and Work in progress,

and it is familiar with and accepts the physical requirements of the Work for the purposes of performing the Phase 1 Work and will perform such inspections and examination of the Worksite and surrounding locations prior to the Applicable Proposal Date for the Phase 2 Work, and otherwise in accordance with the requirements of this Contract, so as to be familiar with and to accept the physical requirements for the Phase 2 Work.

(h) **Feasibility**

The Contractor has evaluated the feasibility of performing the Phase 1 Work within the Contract Time for the Phase 1 Work and the Phase 1 Contract Price, and has reasonable grounds for believing and does believe that such performance, including achievement of Substantial Completion of the Phase 1 Work within the Contract Time for the Phase 1 Work, for the Phase 1 Contract Price, is feasible and practicable. The foregoing is subject to the County's performance of those County obligations under this Contract that are applicable to such Phase 1 Work.

(i) **Potential hazards**

The Contractor is aware of and understands the hazards which are presented to persons, property, and the environment in the performing of any transportation, storage, remediation, or disposal Work (including with respect to waste or Hazardous Substances) that may be required to be performed under this Contract.

(j) **Legal proceedings**

There are no existing or threatened legal proceedings against the Contractor that would have an adverse effect on its ability to perform its obligations under this Contract, its financial condition, or its operations.

(k) **No Contractor Default**

No Contractor Default has occurred and is continuing.

(l) **Governmental Approvals and Applicable Law**

Prior to entering into this Contract, the Contractor familiarized itself with the requirements of all Applicable Law and the requirements for applicable Governmental Approvals, and based upon its review of this Contract, the Contractor will be able to obtain and keep in effect throughout the Term all Governmental Approvals the Contractor is obligated to obtain to perform the Work in accordance with this Contract.

(m) **Difficulty and cost of Work**

The Contractor has estimated the difficulty and cost of successfully performing the Phase 1 Work, and based upon that estimate has concluded that it can successfully perform the Phase 1 Work at the Phase 1 Contract Price.

4. **JOINT AND SEVERAL LIABILITY AND RISK ALLOCATION**

4.1 **Joint and several liability**

If the Contractor is a joint venture or partnership, each venturer, partner, or member shall be jointly and severally liable for any and all of the duties and obligations of the Contractor that are assumed under or arise out of this Contract. Each of such venturers, partners, or members waives notice of the breach or non-performance of any undertaking or obligation of the Contractor contained in, resulting from, or assumed under this Contract, and the failure to give any such notice shall not affect or impair such venturer's, partner's, or member's joint and several liability under this Contract.

4.2 **Project risks**

(a) **General**

Except where a risk is expressly allocated to the County, or a Claim by the Contractor is expressly permitted under this Contract, the Contractor accepts all risks:

- (i) on and from the date of this Contract, associated with Phase 1 Work;
- (ii) on and from the date of any applicable Modification, associated with the applicable Early Works Package; and
- (iii) on and from the date of the Phase 2 Supplement (if any), associated with the remaining Phase 2 Work (not already authorized under a Modification for an Early Works Package).

(b) **Contractor risks**

Without limiting the generality of Section 4.2(a), the Contractor will be solely responsible for:

- (i) the performance of its Work in accordance with its own means, methods, sequences, and procedures, and for coordination of all parts of its Work in compliance with this Contract;
- (ii) during the performance of the Phase 1 Work, verifying all governing dimensions at the Worksite and examining all adjoining work and activities that may have an impact on the Work, and if it identifies any non-conforming governing dimensions or adjoining work in this Contract, submitting an RFI to the County before submission of any Design Document impacted by such governing dimensions or adjoining work, if applicable, and in any case before submission of the Phase 2 Proposal (or any affected Early Works Package Proposal);
- (iii) the performance of such inspections, reviews, and other actions to ascertain the facts necessary or advisable for performing the Work, as are required, represented, or warranted, under this Contract;
- (iv) except as otherwise specified in the California Public Contract Code Section 7105 and this Contract:
 - (A) Goods delivered and Work performed;
 - (B) supplying security and drainage, and erecting any temporary structures as necessary to protect the Goods delivered and Work performed at the Worksite from damage;
 - (C) the risk of injury, loss, or damage to any and all parts of the Goods delivered and Work performed, whether arising from the execution or the non-execution of the Work; and
 - (D) properly rebuilding, repairing, or restoring any parts of the Work that have been damaged or destroyed from any causes at its cost and expense,

in each case until the date when responsibility transfers to the County under Article 18 (Completion) or otherwise under this Contract;
- (v) performing all surveying necessary for the Contractor's performance of all elements of the Work, and as required by this Contract;
- (vi) the preservation of all construction survey references and marks for the duration of their usefulness whereas, if the Contractor loses or disturbs such construction survey references and marks and the County needs to replace them, such replacement will be at the Contractor's sole expense; and
- (vii) ensuring that all Work upon completion conforms to the lines and elevations shown in this Contract, unless a variation is Approved by the County under a Phase 2 Supplement or any other Modification.

(c) **Contractor's responsibility**

In provisions concerning Contractor's responsibility or liability for its actions, inactions, negligence, or fault, the provision shall automatically be deemed to encompass actions, inactions, negligence, or fault of the Contractor, its employees, agents, officers, Subcontractors, and any other Persons for whom the Contractor may be legally or contractually responsible.

4.3 **County's rights do not affect risk allocation**

(a) Neither the exercise of, nor the failure to exercise, the rights of the County under this Contract, including the right to review and comment on, Approve, accept, or reject the Contractor-Furnished Documents or other Work, to provide (or withhold) any other consent, Approval, comment, assent, or notice in relation to the Work, participate in meetings, attend tests, or inspect, monitor, or audit the Work, will:

- (i) relieve the Contractor from, or diminish, alter, or affect, the Contractor's liabilities, obligations, obligations to provide indemnities, or responsibilities under this Contract or otherwise according to Applicable Law;
- (ii) constitute acceptance by the County that the Work satisfies the requirements of this Contract or under Applicable Law;
- (iii) prevent the County from subsequently asserting that the Contractor has not fulfilled its obligations under this Contract or otherwise according to Applicable Law; or
- (iv) act as a waiver of contractual, legal, or equitable rights of the County,

and the County may reject or accept any Work, request changes, or identify additional Work, whether or not the previous exercise of any of the County's rights under this Contract were by the County, its Authorized Representatives, or any other Persons.

(b) Without limiting Section 4.3(a), the County does not assume or owe any duty of care to the Contractor to review, or if the County does so review, in reviewing any Contractor-Furnished Document or other Work for errors, omissions, or compliance with this Contract.

(c) The Contractor acknowledges and agrees that it is its obligation to perform the Work in accordance with this Contract and that the County and the other Indemnified Parties are fully entitled to rely on the Contractor's performance of such obligation.

4.4 **No prejudice**

This Article 4 does not prejudice:

- (a) the Contractor's express rights or remedies under this Contract; or

- (b) the intended risk evaluation and risk allocation review to be performed during Phase 1 and the ability of the Parties to agree to an adjusted risk allocation or other modification to the rights and obligations of the Parties under the terms of any Phase 2 Supplement or any other Modification.

4.5 **Non-binding nature of Meetings**

Each and any meeting held pursuant to this Contract is consultative and advisory only, and nothing which occurs during a meeting of any such group and no information that is presented during a meeting of any such group, will:

- (a) affect the rights or obligations of either Party under this Contract;
- (b) entitle a Party to make any claim against the other;
- (c) relieve a Party from, or alter or affect, a Party's liabilities or responsibilities under this Contract or otherwise according to Applicable Law;
- (d) prejudice a Party's rights against the other Party under this Contract or otherwise according to Applicable Law;
- (e) constitute notice of a Delay nor submittal of a: (i) mitigation action plan under Section 17.5 (Notice of Delays); (ii) Request for Change; (iii) Contractor Initiated Change Proposal; or (iv) Claim; or
- (f) be construed as a direction by a Party to do or not do anything.

5. **COOPERATION AND GOVERNANCE**

5.1 **Duty to cooperate**

- (a) The Contractor will cooperate with the County and its Authorized Representatives and County Contractors in the performance of the Work and in all matters related to the Work and its obligations under this Contract.
- (b) Without limiting the generality of Section 5.1(a) and its obligations under this Contract, the Contractor acknowledges and agrees that the phased approach to the Work described in Article 2 (Term and Phased Work) requires it to partner and frequently interact with the County, including:
 - (i) attending and actively participating in working group meetings and other Project coordination meetings as mutually deemed necessary for the Contractor to prepare, negotiate, and agree on any Early Works Package Proposals and the Phase 2 Proposal, and to manage and deliver the Work and comply with its obligations under this Contract;
 - (ii) responding promptly to a Request for Information from the County in accordance with Section 5.5 (Information Sharing) or otherwise under this Contract;

- (iii) facilitating all document reviews, interactions, information exchanges, and issue investigation and resolution required under the Phase 1 Work or that is otherwise necessary for the Contractor to prepare, negotiate, and agree any Early Works Package Proposals and the Phase 2 Proposal; and
- (iv) to the extent required under the Project Requirements, co-locating its personnel with the County's or any County Contractor's personnel.

5.2 Designation of representatives

(a) Authority and responsibility of the County's Contracting Officer

- (i) The County's Contracting Officer has the authority and responsibility to exercise all powers, rights, or privileges that have been lawfully delegated to the Contracting Officer by the County in all matters relating to or affecting the Work and this Contract.
- (ii) Unless otherwise expressly provided in this Contract, the Contracting Officer may delegate, in writing, specifically described authority and responsibility within the scope of its authority and responsibility to Authorized Representatives.
- (iii) The Contracting Officer is the County's primary Authorized Representative, and is the only person authorized to delegate authority to any other Authorized Representative(s) and any authority or responsibility not so delegated shall remain solely with the Contracting Officer.

(b) Authority and responsibility of the County's Authorized Representatives

- (i) The authority and responsibility of each Authorized Representative will be as set out in this Contract, or in the written delegation of the Contracting Officer in a Notice delivered to the Contractor or in any Notice to Proceed.
- (ii) The Contracting Officer's delegation of responsibility and authority to other Authorized Representative(s) shall be limited to specifically-defined authority and responsibilities.
- (iii) The Authorized Representatives, and the authority and responsibilities of the Authorized Representatives, may from time to time be changed by Notice to the Contractor from the Contracting Officer.
- (iv) Nothing in this Contract shall be construed to bind the County for acts of any County employee or any other Person, or for the acts of the Contracting Officer or any other Authorized Representative that exceed the authority delegated to them under this Contract or in any other written delegation.

(c) **Contractor Representative**

- (i) At all times during the Term, the Contractor shall designate a Contractor Representative with full authority to represent and act for the Contractor. The Contractor must designate its initial Contractor Representative prior to issuance of the Notice to Proceed for the Phase 1 Work.
- (ii) The Contractor Representative shall act for the Contractor in all matters concerning the Work and, subject to all requirements of this Contract, shall have the following authority and obligations:
 - (A) ability to organize the Work and the Work of the Subcontractors, in order to complete the Work in accordance with this Contract;
 - (B) ability to delegate defined authority to other Contractor personnel (who upon such delegation also become Contractor Representatives as provided in this Contract, to the extent specified), subject to Notice to, and acceptance by, the Contracting Officer; and
 - (C) during performance of any Construction Work, the Contractor Representative shall be present at the Worksite, or have its fully-empowered delegate present at the Worksite, at all times that any Construction Work is in progress or at any time any personnel or Subcontractor of the Contractor is present at the Worksite.
- (iii) Any designation of the Contractor Representative(s) or change to that designation is subject to the prior acceptance of the Contracting Officer (or its Authorized Representative). Any request for acceptance of a designation, or change to the designation of, the Contractor Representative(s) shall be submitted by Notice to the County. Any Notice submitted by the Contractor under this Section 5.2(c)(iii) must include a representation of the Contractor that the individual(s) proposed will, subject only to acceptance by the County, have full authority to represent and act for the Contractor, and be delivered together with supporting documentation of the individual's qualifications and capacity to perform the role.

5.3 **Key Personnel and other personnel**

(a) **Organization**

- (i) The Contractor shall only engage (directly or under a Subcontractor) adequately trained, certified, and qualified personnel to perform the Work.
- (ii) Before commencing the Work under a Phase, the Contractor shall prepare and submit, for the County's review and acceptance, an organization chart showing the proposed organization for the performance of that Work and shall maintain the organization chart throughout the Contract Time for that Phase, including updating the chart upon any accepted change to the Key

Personnel under this Section 5.3. The organization chart must be consistent with the Contractor Commitments and other parts of the PMP (subject to any changes accepted under this Section 5.3) and shall indicate the:

- (A) lines of authority, responsibility, and communication;
- (B) locations; and
- (C) names, titles, and functions of all Key Personnel.

(b) Retention of Key Personnel

- (i) The Contractor shall retain and maintain the Key Personnel in accordance with this Section 5.3 and the Contractor Commitments.
- (ii) With respect to the Key Personnel:
 - (A) the Contractor shall retain (or shall ensure that the relevant Contractor member, if applicable, will retain) and utilize individuals specifically named and listed as Key Personnel in the Contractor Commitments (or replacements accepted in accordance with this Section 5.3) to fill the corresponding Key Personnel positions;
 - (B) each individual filling a Key Personnel position will dedicate the amount of time necessary for the proper performance of the Work; and
 - (C) an individual may undertake more than one Key Personnel position with the prior written consent of the County, provided that no individual shall be nominated to fulfill the equivalent of more than one full time role.

(c) Changes to Key Personnel

- (i) Any additional Key Personnel engaged under this Contract for the Phase 2 Work or any proposed change or reassignment of any Key Personnel from those listed in the Contractor Commitments for the purposes of the Phase 2 Work, shall be included as part of the Phase 2 Proposal (or an Early Works Package Proposal, as applicable), together with supporting documentation of the new individual's qualifications and capacity to perform the role. Any individuals accepted by the County as Key Personnel under any related Phase 2 Supplement (or any other Modification) shall, as part of that Phase 2 Supplement (or any other Modification), be deemed to be committed as Key Personnel under the Contractor Commitments for the purposes of this Section 5.3.
- (ii) Any change or reassignment of any Key Personnel other than that described in Section 5.3(c)(i) is subject to the prior written acceptance of the County's Authorized Representative. Any request for the County's acceptance of a

change or reassignment of Key Personnel under this Section 5.3(c)(ii) shall be submitted by Notice to the County, together with supporting documentation of the new individual's qualifications and capacity to perform the role.

(d) **Removal of Contractor personnel**

The Contracting Officer may require the Contractor to remove any individual assigned by the Contractor, or by any Subcontractor, to perform Work or furnish Goods under this Contract, if the Contracting Officer considers such removal in the best interest of the County and the Work. The Contracting Officer's decision to require the Contractor to remove any personnel under this Section 5.3(d), including the Contractor Representative or any Key Personnel, shall be final and binding on the Contractor. Upon such direction, the Contractor must remove the individual(s) and resolve all employment or contractual issues at no cost or expense to, and shall fully indemnify, the County. Any individual(s) removed for any reason shall not be re-employed on any other County project.

(e) **Compensation and benefits**

The Contractor shall be solely liable and responsible for providing all compensation and benefits to, or on behalf of, all Persons performing Work pursuant to this Contract. The County will have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.

5.4 **Risk management meetings**

- (a) The Contractor must actively participate in and attend risk management meetings with the County's Authorized Representative on a monthly basis or as otherwise directed by the County's Authorized Representative, or as required under this Contract or the Risk Management Plan.
- (b) The Contractor may request additional risk management meetings by submitting a request to the County in writing at least 10 Days prior to the date of the proposed risk management meeting. The County will endeavor to accommodate such requests; however, the County reserves the right to accept or reject a request in its sole discretion.
- (c) The Contractor must attend a kick-off risk management meeting within 45 Days of the Commencement Date under the Notice to Proceed for the Phase 1 Work.
- (d) The agenda for the kick-off risk management meeting will be set by the County and will include a presentation of the then current Risk Register. The agenda for subsequent risk management meetings will be set by the County in consultation with the Contractor and will include the items described in Section 5.4(f).

- (e) Each of the Parties will ensure that each risk management meeting is attended by a mix of team members that:
 - (i) are consistent across all risk management meetings (as practicable);
 - (ii) have specialist knowledge to effectively consider key Project risks and complex matters relating to the Work;
 - (iii) are authorized to discuss key Project matters on behalf of their organization; and
 - (iv) if requested by the County, include representatives of a Subcontractor.

The County is entitled to have representatives of any County Contractor or Third Party, an independent facilitator, or such other Persons as the County determines, attend meetings of the risk management working group.

- (f) At risk management meetings, the Parties shall actively manage the risks for the Project and shall:
 - (i) develop, review, and make updates to the Risk Register including identifying new risks in accordance with the Project Requirements and reflecting discussions and decisions made during the meeting, including with respect to the matters listed below;
 - (ii) develop proposals, seek solutions, agree on implementation, and track progress of measures for avoiding or mitigating the risks listed on the Risk Register to support delivery of the Project in accordance with this Contract;
 - (iii) develop qualitative and quantitative analysis of the risks;
 - (iv) during Phase 1, consider different approaches to the risk allocation for the Phase 2 Work, and decide upon the risk allocation assumptions for the purposes of preparing the Phase 2 Proposal;
 - (v) decide upon allocation and any specific action to be taken by the Parties in response to the risks listed on the Risk Register;
 - (vi) remove from the Risk Register those risks which have been avoided or passed, and document the resolution; and
 - (vii) otherwise assess, review, and monitor risks and risk response strategies as required under the Project Requirements.
- (g) The County and the Contractor will prepare and agree upon a charter for the risk management working group.
- (h) If requested by the County, the Contractor shall, within five Days of a risk management meeting, submit to the County for its review, a written report of the

points discussed and agreed upon at the risk management meeting and any consequential impact on the Project, and shall update and re-submit any such written report to incorporate any corrections notified to it by the County; provided that any failure by the County to comment on or expressly reject any such written report shall in no case be deemed acceptance by the County of such written report.

- (i) Without limiting its Notice obligations under Section 25.9 (Request for Change) and Article 24 (Delay Events), the Contractor must advise the County at the risk management meetings if it considers any proposal or solution discussed at the meeting a Change or could give rise to a Claim.

5.5 Information Sharing

- (a) Without limiting the generality of Article 32 (Inspections, Access, Audit, and Records) and the Contractor's express obligations under the Project Requirements (including its express obligations to provide information under the Phase 1 Work for the purposes of negotiating and agreeing on the Phase 2 Proposal), the County may by Notice submit a request for additional information to the Contractor with respect to any part of this Contract or the Work, including information in the form of interim or draft Contractor-Furnished Documents prepared by the Contractor prior to formal submittal under this Contract. Upon delivery of any request for additional information under this Section 5.5(a), the Contractor must provide to the County the information requested promptly and in any case within 10 Days of delivery of the request (or such longer period as the Parties may agree to, having regard to the quantum of information requested).
- (b) The Contractor may submit a Request for Information to the County with respect to any part of this Contract or the Work, in accordance with the following terms:
 - (i) the Contractor shall submit RFI(s) in sufficient time prior to the date by which it needs the information to allow for the County's review under this Section 5.5;
 - (ii) the County will respond to each RFI submitted in accordance with this Contract within 21 Days (or such longer period as the County may reasonably require);
 - (iii) if the Contractor considers the County's response to an RFI a Change for which no Change Notice has been issued, the Contractor must submit a Request for Change to the County in accordance with Section 25.9 (Request for Change); and
 - (iv) if the Contractor performs any Work that is the subject of an RFI prior to the County's written response to the RFI, it shall be at the Contractor's risk.

PART B – WORKSITE, UTILITIES, AND THIRD PARTIES

6. WORKSITE AND TEMPORARY INTERESTS

6.1 Nature of the Contractor's Interest

Subject to Section 6.2 (Access to the Worksite), this Contract does not grant to the Contractor any right, title, interest, or estate (including by way of lease, easement, conveyance, lien, or mortgage) in the Project or the Worksite.

6.2 Access to the Worksite

- (a) The County shall, at its own cost, obtain and provide the Contractor with Access to the Worksite not later than the Worksite Access Date until the Contract End Date.
- (b) The County will Notify the Contractor when the Worksite becomes accessible, and subject to Section 2.4 (Notices to Proceed), the Contractor will have Access to the Worksite from the Worksite Access Date for the sole purpose of performing its obligations and exercising its rights under this Contract.
- (c) Prior to the Worksite Access Date, the County will provide the Contractor with a temporary right of entry to the Worksite, and for such period of time as is reasonably requested by the Contractor for the purposes of:
 - (i) performing the Phase 1 Work or any other pre-construction Work authorized under the Phase 2 Supplement or any other Modification; or
 - (ii) carrying out such other activities as the County may approve by Notice in its sole discretion,

provided that the Contractor shall exercise such temporary right of entry (and shall ensure that any Contractor-Related Entity does so) in a manner that:

- (A) complies with the Contractor's obligations under Sections 6.3 (Permitted use) and 6.4 (Non-exclusive Access), and any reasonable site access and work health and safety policies and procedures then applicable to the Worksite; and
 - (B) does not unreasonably interfere with the County or third party rights to the Worksite.
- (d) The Parties acknowledge and agree that during Phase 1 and prior to submittal of the Phase 2 Proposal:
 - (i) as part of any review of Exhibit 6 (Worksite) and together with each submittal of a Design Document, Value Engineering Report, Milestone OPC, or proposed updates to the CPM Schedule to incorporate the Phase 2 Work under the Statement of Work for the Phase 1 Work, the Contractor shall identify any proposed modifications to the Worksite Access Date,

modifications to the definition and limits of the Worksite, and modifications to or additional Temporary Construction Easements; and

- (ii) the County may direct by Notice, or the Parties may discuss and agree on:
 - (A) modifications to the Worksite Access Date (including accelerating or delaying the Worksite Access Date);
 - (B) modifications to the definition and limits of the Worksite; or
 - (C) modifications to or additional Temporary Construction Easements.
- (e) The Contractor must take into account any agreement or direction under Section 6.2(d) in preparing its Phase 2 Proposal (and any relevant Early Works Package Proposal), by incorporating such modifications in any Phase 2 Supplement or any other relevant Modification under this Contract.
- (f) If, after the Applicable Proposal Date for the Phase 2 Proposal (or any applicable Early Works Package), the County Notifies the Contractor that the provision of Access to the Worksite will be delayed to a date later than the Worksite Access Date or if the County fails (with or without Notice) to provide Access to the Worksite on the Worksite Access Date, the Contractor shall prepare a mitigation action plan in accordance with Section 17.6 (Mitigation action plan for Delay), and mitigate any Delay or other consequence arising from such delayed Access in accordance with Section 24.4 (Mitigation).

6.3 Permitted use

- (a) The Contractor must not use the Worksite, or permit it to be used, for any purpose other than the performance of its obligations and exercise of its rights under this Contract.
- (b) The Contractor must not undertake the Work such that the location of any physical works is outside the Worksite unless the location of Work outside the Worksite is expressly permitted under a Modification or is otherwise authorized by the County in writing.

6.4 Non-exclusive Access

- (a) The Contractor acknowledges and agrees that in accordance with Article 32 (Inspections, Access, Audit, and Records), the Contractor may not have exclusive access to or use of the Worksite.
- (b) For the purposes of security and safety, the Contractor shall be deemed to have control of any part of the Worksite from the Worksite Access Date until the Contract End Date.

6.5 Temporary Construction Easements

- (a) The Contractor must comply with all requirements regarding use of the land subject to a Temporary Construction Easement as defined in Exhibit 6 (Worksite) or otherwise Notified to the Contractor.
- (b) Promptly upon ceasing to use or occupy a Temporary Construction Easement and in any case by the Contract End Date, the Contractor must:
 - (i) comply with Section 15.3 (Vacating the Worksite) with respect to such land; and
 - (ii) ensure such land is handed back to the County (if applicable) or the owner or occupier of such land.

7. WORKSITE

7.1 Conditions affecting the Work

(a) Contractor's Worksite Inspection

- (i) At such times during Phase 1 as required under this Contract or otherwise as is necessary for the Contractor to perform the Phase 1 Work and comply with its obligations under this Contract and in any case prior to the Applicable Proposal Date for the Phase 2 Work (or any Early Works Package, as applicable), the Contractor shall, in accordance with Good Industry Practice:
 - (A) inspect and evaluate the Worksite and surrounding locations to the extent: (aa) the Contractor deems necessary or advisable for performing the Work; (bb) necessary to give the representations and warranties under Article 3 (Representations and warranties); and (cc) otherwise in accordance with the requirements of this Contract;
 - (B) satisfy itself as to the character, quality, and quantity of surface and subsurface substances or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Worksite, and a review of all documentation relating to the Worksite and the Work, including:
 - (aa) this Contract;
 - (bb) Reference Documents, including any Reference Documents describing any exploratory work performed by the County; and
 - (cc) all other information made available to the Contractor, or available as public record; and
 - (C) where risks associated with the conditions affecting the Worksite are discovered pursuant to the Contractor's inspections under this

Section 7.1(a), report on such risks during the risk management meetings held in accordance with Section 5.4 (Risk Management Meetings) including, to the extent possible, quantifying the risk and proposing an approach to allocation of the risks.

- (ii) Any failure of the Contractor to take the actions described in this Section 7.1(a) shall not relieve the Contractor from responsibility for properly estimating the difficulty and cost of successfully performing the Work or for proceeding to successfully perform the Work without additional expense to the County following the issuance of the Notice to Proceed for the relevant part of the Work.

7.2 Protection of Existing Improvements

(a) Protection

The Contractor shall protect Existing Improvements and shall exercise due caution to avoid damage to Existing Improvements.

(b) Repair and replacement

Unless otherwise provided in this Contract, the Contractor shall repair or replace all Existing Improvements damaged or removed by the Contractor. Repairs and replacements shall be at least Equal to the Existing Improvements and shall match them in finish and dimension.

(c) Costs

Unless otherwise provided in this Contract, all costs for protecting, repairing, and replacing Existing Improvements under this Section 7.2 shall be the sole expense of the Contractor. If the Contractor fails or refuses to make timely repairs or provide replacements in accordance with this Section 7.2, the County may make the repairs or provide the replacements. Unless otherwise provided in this Contract, all costs incurred by the County for such repairs or replacements shall be repaid by the Contractor upon demand or, without limitation of any of the County's rights and remedies provided by Applicable Law or under this Contract, the County may deduct the cost from any amount due to the Contractor under this Contract.

7.3 Differing Site Conditions (Type 1 and Type 2)

(a) Notice of discovery

The Contractor shall, before any of the following physical conditions are disturbed, provide immediate oral or electronic mail notice of the discovery of such conditions to the County's Authorized Representative, followed by written Notice to the Contracting Officer of the discovery within 24 hours of:

- (i) any subsurface or latent physical conditions (including Utilities) at the Worksite differing materially from those indicated in the Contract (or, in the

case of any part of the Phase 2 Work, those indicated in assumptions agreed upon or directed under this Contract for incorporation in the Phase 2 Proposal or Early Works Package Proposal, as applicable) as of the Applicable Proposal Date for the Work being performed (a "**Type 1 Condition**"); and

- (ii) any previously unknown (as of the Applicable Proposal Date for the Work being performed) physical conditions at the Worksite of any unusual nature that differ materially from those ordinarily encountered in and generally recognized as inherent in the type of work provided for in this Contract (a "**Type 2 Condition**"),

unless a Notice has or will be given with respect to such subsurface or latent physical conditions in accordance with Section 7.4 (Waste and Hazardous Substances) in each case.

(b) **Continuing Work after discovery**

If the Contractor encounters conditions on the Worksite during the performance of the Work that it reasonably believes to be a Type 1 Condition or a Type 2 Condition, the Contractor shall not disturb the condition or interfere with the County's right or ability to investigate, but may continue Work in the area.

(c) **County's responsibility and determination**

- (i) The County will promptly investigate any suspected Type 1 Condition or Type 2 Condition, and if it finds that a Type 1 Condition or a Type 2 Condition exists, and such condition has caused a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the County will make an adjustment to the Contract Price and/or Contract Time with respect to that decrease or increase in accordance with Article 25 (County Changes), and in the absence of the County making such adjustment, that condition shall constitute a Differing Site Condition for the purposes of the definition of Compensable Delay and Article 24 (Delay Events), and the Contractor shall be entitled to submit a Request for Change under Section 25.9 (Request for Change), in each case to the extent that:

- (A) the Contractor has given timely Notice of the asserted Type 1 Condition or Type 2 Condition, as required in this Section 7.3 and, where applicable, Article 24 (Delay Events) and Section 25.9 (Request for Change);

- (B) the Contractor has given the County an opportunity to investigate prior to the asserted Type 1 Condition or Type 2 Condition being disturbed in accordance with this Section 7.3;

- (C) the Type 1 Condition or Type 2 Condition was not unknown as of the Applicable Proposal Date as a result of the Contractor's failure to

comply with Section 7.1(Conditions affecting the Work), and was not otherwise attributable to any breach of this Contract, any Applicable Law or any Governmental Approval by, or any negligent act or omission of, the Contractor.

- (ii) In the event that a Dispute arises between the County and the Contractor as to whether a Type 1 Condition or a Type 2 Condition exists, or whether a Type 1 Condition or a Type 2 Condition has caused 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 performing the Work within the Contract Time, and shall proceed with all Work to be performed under this Contract. The Contractor shall retain any and all rights provided either by this Contract or by Applicable Law which pertain to the resolution of Disputes and protests between the Parties.

7.4 Waste and Hazardous Substances

(a) Notice

The Contractor shall, before the applicable substances are disturbed, provide immediate oral or electronic mail notice to the County's Authorized Representative of the discovery at the Worksite during the course of the Work, of:

- (i) any hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with Applicable Law; or
- (ii) material quantities of any other Hazardous Substance,

in each case, followed by Notice to the Contracting Officer of the discovery within 24 hours, including details of any obligation to notify State or federal agencies under Applicable Law. For the purposes of this Section 7.4, "material quantities" of a Hazardous Substance means quantities that trigger any reporting, investigation, or remediation requirements under any Environmental Law.

(b) Continuing Work after discovery

If the Contractor encounters conditions on the Worksite during the performance of the Work that it reasonably believes to be hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with Applicable Law or material quantities of any other Hazardous Substance, in each case that is not a Contractor-Generated Hazardous Substance, the Contractor shall not disturb, or further disturb the condition, or interfere with the County's right or ability to investigate, and shall suspend Work in the immediate area of the suspected hazardous waste or other Hazardous Substance in accordance with Section 17.7 (Suspension) (and as if the County had delivered a suspension Notice under Section 17.7 (Suspension))

until the County authorizes the Contractor to resume, but shall continue Work on the unaffected areas of the Worksite.

(c) **County's responsibility and determination**

- (i) The County will promptly investigate any suspected hazardous waste or other Hazardous Substance Notified to it under Section 7.4(a) (Notice) that is not a Contractor-Generated Hazardous Substance, and if it finds that such hazardous waste or material quantities of any other Hazardous Substance exists, and such condition has caused a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, the County will make an adjustment to the Contract Price and/or Contract Time with respect to that decrease or increase in accordance with Article 25 (County Changes), and in the absence of the County making such adjustment, that condition shall constitute a Differing Site Condition for the purposes of the definition of Compensable Delay (and Article 24 (Delay Events)) and the Contractor shall be entitled to submit a Request for Change under Section 25.9 (Request for Change), in each case to the extent that:
 - (A) the Contractor has given timely Notice of the asserted condition, as required in this Section 7.4, and, where applicable, Article 24 (Delay Events) and Section 25.9 (Request for Change);
 - (B) the Contractor has given the County an opportunity to investigate prior to the asserted condition being disturbed in accordance with this Section 7.4; and
 - (C) the hazardous waste or other Hazardous Substance is not a Contractor-Generated Hazardous Substance.
- (ii) In the event that a Dispute arises between the County and the Contractor as to whether hazardous waste or material quantities of any other Hazardous Substance notified to the County under Section 7.4(a) (Notice) that is not a Contractor-Generated Hazardous Substance exists, or such condition has caused 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 performing the Work within the Contract Time, and shall proceed with all Work to be performed under this Contract. The Contractor shall retain any and all rights provided either by this Contract or by Applicable Law which pertain to the resolution of Disputes and protests between the Parties.
- (iii) The County reserves the right to use other County Contractors to investigate and to perform work to determine the nature and extent of any suspected hazardous waste or other Hazardous Substances on the Worksite that is not a Contractor-Generated Hazardous Substance, and to handle and/or remove such hazardous waste or other Hazardous Substances from the area. Except as otherwise expressly provided in this Contract, the County's

use of other County Contractors shall not constitute the basis for a Request for Change or Claim.

- (iv) The Contractor may encounter Hazardous Substances, asbestos, gas casings or underground storage tanks, lead or lead-based paint surfaces in structures, demolition materials, and soils requiring hazardous waste operations, as defined by the California Occupational Safety and Health Administration. The County will procure another specialty County Contractor to perform all such hazardous waste operations except to the extent of Contractor-Generated Hazardous Substances and any other hazardous waste operations identified in this Contract as being the responsibility of the Contractor.

(d) **Generator status**

- (i) Except as provided in Section 7.4(d)(ii), for the purposes of allocating the risk between the Parties under this Contract generally:
 - (A) the Contractor shall not be considered to be the generator of Hazardous Substances located within or outside the Worksite;
 - (B) the Contractor shall not be required to execute any hazardous waste manifests as a "generator"; and
 - (C) Hazardous Substances encountered in the performance of the Work shall be disposed of, if at all, utilizing an 'EPA Identification Number' or other appropriate legal device obtained by, and carried in the name of, the County or another Person designated by the County.
- (ii) The Contractor (and not the County) shall be considered the generator, for the purposes of allocating the risk between the Parties under this Contract:
 - (A) with respect to any Hazardous Substances brought onto the Worksite and hazardous waste generated, by any Contractor-Related Entity, including to the extent attributable to the use, containment, storage, management, transport, and disposal of all such Hazardous Substances or hazardous waste; and
 - (B) to the extent any spill, leak, emission, release, discharge, injection, escape, dumping, or disposal of Hazardous Substances into the soil, air, surface water, groundwater, or Environment, including any exacerbation of an existing release or condition of Hazardous Substance contamination, is attributable to the breach of any Applicable Law, Governmental Approval, or this Contract (including any acts or omissions that are not in accordance with Good Industry

Practice), negligence, or willful misconduct by any Contractor-Related Entity,

((A) and (B) together, a "**Contractor-Generated Hazardous Substance**").

(e) **Contractor responsibilities**

The Contractor is solely responsible for:

- (i) using Reasonable Efforts, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas of known Hazardous Substances;
- (ii) unless otherwise expressly provided in this Contract, making its own arrangements for storing and disposing of waste and excess substances generated from the Contractor's performance of the Work utilizing storage and Disposal Facilities that are appropriately licensed and permitted for such storage and disposal in accordance with Applicable Law, Governmental Approvals, and Good Industry Practice, including Notifying the County and making alternative arrangements if any such storage or Disposal Facility loses its permitted status during the Term;
- (iii) compliance with all Applicable Law and Governmental Approvals with respect to any Contractor-Generated Hazardous Substances and its other obligations under this Section 7.4;
- (iv) the use, containment, storage, management, transport, and disposal of all Contractor-Generated Hazardous Substances in accordance with this Contract, Good Industry Practice, and all Applicable Law and Governmental Approvals, including obtaining an 'EPA Identification Number' and signing of waste manifests;
- (v) coordinating removal and disposal of all Contractor-Generated Hazardous Substances upon Substantial Completion of the applicable part of the Work or the earlier termination of this Contract for any reason, in accordance with this Contract, Good Industry Practice, and all Applicable Law and Governmental Approvals, including demonstrating such removal, remediation, and disposal necessary for protection of human health and the environment to the reasonable satisfaction of the County and providing the County with copies of all records relating to such removal, remediation, and disposal;
- (vi) any legal disposal site outside the Worksite, and shall pay all associated costs and obtain necessary permits, if any;
- (vii) submitting a 'Material Safety Data Sheet' (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B (or such equivalent form as may be amended or replaced), for all Contractor-Generated Hazardous

Substances delivered under this Contract that involve possible exposure to Hazardous Substances, or items containing Hazardous Substances, five Days before delivery of the Hazardous Substance, whether or not listed in Appendix A of the Federal Standard; and

- (viii) payment of all penalties, expenses (including attorneys' fees and costs), costs, suits, judgments, claims, actions, damages (including damages to natural resources, property or Persons), delays, and liability associated with, arising out of, or related to any Contractor-Generated Hazardous Substances.

(f) **County's rights in Hazardous Substance Data**

- (i) The County shall have the right to use, duplicate, and disclose data furnished by the Contractor under this Contract to:
 - (A) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of any Hazardous Substance;
 - (B) obtain medical treatment for those affected by the substance; and
 - (C) have others use, duplicate, and disclose the data on behalf of the County for these same purposes.
- (ii) The County shall not be precluded from using similar or identical data acquired from other sources.
- (iii) The data shall not be duplicated, disclosed, or released outside the County, in whole or in part for any acquisition or manufacturing purpose.
- (iv) The County may use, duplicate, and disclose data furnished under this Section 7.4(f) in precedence over any other Article of this Contract providing for rights in data.

(g) **Contractor liability**

Neither the requirements of this Section 7.4, nor any act or failure to act by the County, shall relieve the Contractor of any responsibility or liability for the safety of the personnel or property of the County, the Contractor, Contractor's Subcontractors, and other contractors (including County Contractors) at the Worksite.

7.5 Historical, archaeological, paleontological, and scientific discoveries

- (a) If the Contractor encounters anything of historical, archaeological, paleontological, or scientific interest during the performance of its Work or on the Worksite, the Contractor must:

- (i) immediately, and in any case within 24 hours, report the discovery to the County's Authorized Representative;
 - (ii) ensure that the discovery is preserved and protected in place and not disturbed further, including by halting the performance of any Construction Work in the vicinity of the discovery, if necessary;
 - (iii) comply with all requirements of Government Entities and any directions of the County in relation to the discovery; and
 - (iv) continue to perform the Work, except to the extent otherwise:
 - (A) directed by the County;
 - (B) ordered by a court or tribunal; or
 - (C) required by Applicable Law.
- (b) All things of historical, archaeological, paleontological, or scientific interest found on or under the surface of the Worksite will, as between the Parties, be the absolute property of the County.

7.6 Environmental compliance

Without limiting the generality of Article 10 (Law, Regulatory Requirements, and Approvals), the Contractor shall:

- (a) comply with all applicable Environmental Laws and all interpretations, guidelines, clarifications, mitigation measures, and any other requirements of Government Entities having jurisdiction related to such Environmental Laws, including in each case those related to Hazardous Substances; and
- (b) retain and submit evidence that all applicable requirements under Environmental Laws and this Section 7.6 are being fully complied with in the performance of the Work, including submitting evidence that all applicable air quality control criteria and requirements are being fully complied with.

8. UTILITIES AND THIRD PARTIES

8.1 Responsibility for Utility Adjustments

- (a) The Contractor shall:
 - (i) as part of the Phase 1 Work, perform all research, surveys, inspections, identified as being its responsibility to perform or cause to be performed in accordance with Applicable Law, Governmental Approvals, and the other terms of this Contract, in each case to the extent the County grants any necessary temporary access under Section 6.2(c) (Access to the Worksite) to perform such research, surveys, and inspections; and

- (ii) after execution of a Phase 2 Supplement (or an applicable Modification for an Early Works Package), coordinate and cause all Utility Adjustments required to perform the Work in accordance with Applicable Law, Governmental Approvals, the Project Requirements, and the other terms of this Contract.
- (b) The Contractor will include all required Utility Adjustments in its Phase 2 Proposal and may propose performance of Utility Adjustments under one or more Early Works Packages in accordance with Section 2.3(a) (Early Works Packages).
- (c) Prior to submittal of the Phase 2 Proposal (and prior to submittal of any Early Works Package Proposal under which Utility Adjustments are proposed to be performed), the Contractor shall Notify the County in accordance with the Project Requirements, of all Utility Adjustments required or planned to be performed as part of the Work, following which the Parties may agree or the County may direct by Notice to the Contractor, that the County (and not the Contractor) will be responsible for performing or causing to be performed additional Utility Adjustments. Where the Parties agree to adjusted responsibilities or the County directs adjusted responsibilities by Notice under this Section 8.1(c), such adjusted responsibilities with respect to the Utility Adjustments shall be taken into account by the Contractor in preparing its Phase 2 Proposal (and any relevant Early Works Package Proposal) and will be incorporated in any Phase 2 Supplement or any other Modification under this Contract.
- (d) The Contractor acknowledges and agrees that:
 - (i) its obligations and liabilities under this Section 8.1 include obligations that would typically be the responsibility and liability of public agencies subject to the requirements of California Government Code Section 4215, such as responsibility for performing Utility Adjustment Work for any existing main or trunkline Utilities within the Project Site identified by the Applicable Proposal Date by the Contractor, or any other County Contractor, with the understanding that all such obligations will be included in the Phase 2 Proposal (or applicable Early Works Package Proposal) and performed as part of the Phase 2 Work in accordance with the Project Requirements; and
 - (ii) the costs of complying with its obligations and liabilities:
 - (A) under Section 8.1(a)(i) are included in the Phase 1 Contract Price, in the case of those obligations and liabilities that form part of the Phase 1 Work; or
 - (B) under Section 8.1(a)(ii) will be included in the Phase 2 Contract Price (and any applicable Early Works Package Contract Price), in the case of those obligations and liabilities that form part of the Phase 2 Work,

and to the extent that the California Government Code might be construed to prohibit the County from delegating such obligations and liabilities to the

Contractor as provided in this Section 8.1(d), the Contractor hereby waives the benefit of such statute.

- (e) The Contractor agrees that in the event the waiver under Section 8.1(d) is deemed ineffective, the County may deliver to the Contractor a Change Order removing the relevant obligations and liabilities from the Contractor's scope and:
 - (i) to the extent that the removed scope was part of the Phase 1 Work or was part of the Phase 2 Work and the change is made after execution of any Phase 2 Supplement (or an applicable Modification for an Early Works Package), Section 26.3 (Decreased Costs) shall apply with respect to the resulting reduction in the Contractor's costs; and
 - (ii) to the extent that the removed scope was part of the Phase 2 Work and is made prior to execution of any Phase 2 Supplement (or an applicable Modification for an Early Works Package), the Contractor shall take account of such change in its Phase 2 Proposal (or applicable Early Works Package Proposal).
- (f) Nothing in Section 8.1(d) is intended to limit the Contractor's entitlement to an adjustment to the Contract Price and/or Contract Time or relief for a Compensable Delay for a Differing Site Condition as determined under Section 7.3(c) (County's responsibility and determination).

8.2 **Third Party requirements and coordination**

The Contractor acknowledges and agrees that the costs of complying with any obligations under this Contract to manage, coordinate, and/or otherwise actively participate in any required reviews of Contractor-Furnished Documents by applicable Third Parties:

- (a) are included in the Phase 1 Contract Price, in the case of those obligations and liabilities that form part of the Phase 1 Work (including management and coordination of all design reviews); or
- (b) will be included in the Phase 2 Contract Price (and any applicable Early Works Package Contract Price), in the case of those obligations and liabilities that form part of the Phase 2 Work (or Early Works Package, as applicable),

and the Contractor shall not otherwise be entitled to any additional compensation from the County for such management, coordination, or other active participation.

8.3 **Betterments**

- (a) The Contractor shall Notify the County's Authorized Representative if it receives a request from a Third Party to undertake any activities or work arising from or in connection with a Betterment.

- (b) The Contractor shall not perform any activities or work arising from or in connection with a Betterment unless the County issues a Modification for such activities or work.

8.4 Disputes and Third Parties

- (a) The Contractor shall use Reasonable Efforts to cooperate and coordinate with the County, including through provision of any assistance reasonably requested by the County, including providing supporting drawings, data, and technical information at the times and in the manner reasonably requested by the County, if a dispute arises between the County and a Third Party in relation to any Utility Adjustment or Third Party review.
- (b) The Contractor shall use Reasonable Efforts to cooperate and coordinate with the County and a Third Party, including through provision of any assistance reasonably requested by the County or such Third Party, if a Third Party Claim is filed against any such party in relation to the Utility Adjustment Work.
- (c) The Contractor shall use Reasonable Efforts to mitigate the delay, cost, and any other consequences caused by a dispute contemplated in this Section 8.4.

PART C – OTHER GENERAL REQUIREMENTS

9. INFORMATION

9.1 Reference Documents

- (a) The Reference Documents are not a part of the Contract, but are provided for the purposes of information only and shall not be interpreted otherwise.
- (b) The County makes no representations or warranties with respect to the reliability, relevance, accuracy, completeness, or fitness for any purpose of any of the Reference Documents and subject to Section 40.3 (No exclusion), shall not be responsible or liable to the Contractor for any Loss or cause of action whatsoever suffered by the Contractor by reason of any use of information contained in or any action or forbearance in reliance on, a Reference Document.
- (c) Except where a risk is expressly allocated to the County under this Contract, if the Contractor intends to use or uses information contained in any Reference Document, it shall use the information at its own risk. The Contractor is solely responsible for determining which information is sufficiently reliable, relevant, accurate, complete, and fit for the Contractor to use for the Contractor's intended purpose.
- (d) The Reference Documents are subject to revision at any time but the County is under no obligation to notify the Contractor of any such revisions.
- (e) Subject to Section 40.3 (No exclusion) and except to the extent that this Contract includes an express obligation for the County to deliver certain information to the

Contractor, the County will not have any liability to the Contractor with respect to any failure to make available to the Contractor any materials, documents, drawings, plans, or other information relating to the Project or the Work.

9.2 Information furnished by other Persons

The County will not be responsible or liable in any respect for any Loss or cause of action whatsoever suffered by the Contractor by reason of its use of any information furnished by other Persons to the Contractor, or for any actions of forbearance in reliance on information furnished by other Persons to the Contractor. The Contractor further acknowledges and agrees that:

- (a) if and to the extent the Contractor, any of its Subcontractors or anyone on the Contractor's behalf uses information furnished by other Persons to the Contractor, the Contractor, not the County, shall be fully responsible for the use of such information; and
- (b) any use of such information is entirely at the Contractor's own risk and at its own discretion.

Without limiting Section 9.1 (Reference Documents), this Section 9.2 does not apply and is not intended to apply to third party information furnished to the Contractor by the County.

9.3 Documents furnished by the County

The County will provide the Contractor with one electronic copy of this Contract (including all Exhibits, the Incorporated Documents, and the Incorporated Manuals) and all Reference Documents at no expense. The Contractor shall be responsible for supplying all Subcontractors or itself with additional copies of these documents at the Contractor's own expense.

9.4 Contractor obligations

Without limiting the representations and warranties, responsibilities, and obligations of the Contractor under Article 3 (Representations and warranties), Section 4.2(b) (Contractor risks), and Section 7.1(a) (Contractor's Worksite inspection), the Contractor is responsible for conducting, in accordance with Good Industry Practice, any and all studies, analyses, and investigations it deems necessary or advisable to verify or supplement any information in the Reference Documents, this Contract, or that is otherwise furnished by the County or other Persons, for the purposes of performing the Work.

10. LAW, REGULATORY REQUIREMENTS, AND APPROVALS

10.1 Compliance

- (a) The Contractor must at all times in performing the Work comply with all Applicable Law and the terms of all Governmental Approvals.

- (b) The Contractor must perform its obligations and (where relevant) shall require each Subcontractor to perform their respective obligations under this Contract and the Subcontracts in accordance with Exhibit 4 (Regulatory Requirements).
- (c) The Contractor must comply with changes to Applicable Law, and with any changed conditions of any Governmental Approval, that occur at any time prior to Final Acceptance of the Work by the County, including changes prior to execution of this Contract. Subject to any Contractor entitlement to relief for an Excusable Delay or Compensable Delay, the Contractor must comply with the terms of this Section 10.1 at its sole cost and expense, regardless of whether such compliance would require additional Work, Construction Equipment, or Goods not expressly described in this Contract.

10.2 Responsibility for Governmental Approvals

- (a) Prior to beginning any part of the Work, the Contractor must:
 - (i) obtain any Governmental Approval for that part of the Work expressly required to be obtained by the Contractor under this Contract; and
 - (ii) identify and obtain all other Governmental Approvals required for the timely performance of that part of the Work that are not the responsibility of the County as a County-Provided Approval.
- (b) The Contractor must undertake all actions necessary to maintain in full force and effect all Governmental Approvals, including performance of any and all environmental mitigation measures required by the Governmental Approvals, except to the extent that responsibility for maintaining a Governmental Approval or for performance of such measures is expressly allocated to the County or any other Person under this Contract.
- (c) Except as otherwise expressly provided in this Contract, the Contractor shall be liable for any delay by a Government Entity in the granting, extending, or renewing of a Governmental Approval. The Contractor must:
 - (i) provide the County with reasonable advance Notice of any meetings to be held with a Government Entity with respect to any application by the Contractor to obtain, renew, replace, extend the validity of, or arrange necessary amendments to, a Governmental Approval and the County will be entitled to attend any such meetings; and
 - (ii) Notify the County immediately (and in any case within three Days) upon becoming aware of any delay in obtaining, extending or renewing a Governmental Approval.
- (d) The Contractor must promptly (and in any event within seven Days after obtaining, amending, or renewing a Governmental Approval) deliver to the County true and

complete copies of any new, amended, or renewed Governmental Approval obtained by the Contractor.

- (e) The County has obtained and provided, or will obtain and provide, the County-Provided Approvals and will maintain (including obtaining any required extensions or renewals) such County-Provided Approvals for the duration of the time periods set out in the Project Requirements provided that the Contractor is responsible for:
 - (i) obtaining any amendments or modifications to any County-Provided Approvals necessary to reflect the Final Design Documents or construction means and methods if the Final Design Documents or construction means and methods deviate from the basis upon which a County-Provided Approval was initially granted by the relevant Government Entity (and if no such amendments or modifications are granted, the Contractor shall, at its own risk and cost, revise the Final Design Documents or construction means and methods as necessary to satisfy the requirements of the relevant Governmental Approval as granted); and
 - (ii) obtaining any renewals or extensions to a County-Provided Approval beyond the time periods set out in the Project Requirements.
- (f) The Contractor must provide such assistance as is reasonably requested by the County in dealing with any Government Entity with respect to a County-Provided Approval or otherwise in relation to the Project, including providing information and reports regarding the Work, executing declarations, and attending meetings and hearings, but excluding legal services.
- (g) During Phase 1 and prior to submittal of the Phase 2 Proposal (or any relevant Early Works Package Proposal), the Parties may agree to, or the County may Notify the Contractor of, adjustments to the allocation of: (i) responsibility for obtaining and maintaining necessary Governmental Approvals; or (ii) the risk of delay to Governmental Approvals. Any such adjustments agreed to by the Parties or Notified by the County shall be taken into account by the Contractor in preparing its Phase 2 Proposal (and any relevant Early Works Package Proposal) and will be incorporated in any Phase 2 Supplement or any other Modification made under this Contract.

10.3 **Classification of Contractor's License**

Without limiting the generality of Section 10.2 (*Responsibility for Government Approvals*):

- (a) for the duration of the Work, the Contractor and its Subcontractors must:
 - (i) perform the Work under the supervision of Persons who are careful, experienced, and competent in their respective trades or professions, who possess the professional capability to perform the Work, and who shall assume professional responsibility for the accuracy and completeness of the Work prepared or checked by them; and

- (ii) possess and maintain, and ensure that Work is performed under the supervision of Persons that possess and maintain, all required State contractor license(s), professional license(s), and registrations needed to perform the Work;
- (b) if a part of the Work requires the Contractor to handle Hazardous Substances, the Contractor or the applicable Subcontractor must possess and maintain, throughout the duration of that part of the Work, any and all licenses, registrations, and certifications required by Applicable Law to perform that part of the Work; and
- (c) proof of validity of all licenses and registrations required in this Section 10.3 shall be provided to the County on an annual basis.

10.4 **Issuance to the County**

If any Governmental Approval required to be obtained by the Contractor must formally be issued in the name of the County, the Contractor must undertake all efforts to obtain such Governmental Approval (and any renewal or amendments to it), including providing information requested by the County and participating in meetings regarding such Governmental Approval subject to the County's reasonable cooperation with the Contractor, including execution and delivery of appropriate applications and other documentation in a form accepted by the County.

10.5 **Citations, enforcement, or appeal**

The Contractor must disclose and provide copies of any citation, enforcement, or appeal correspondence from or to the California Occupational Safety and Health Administration or any other Government Entity with respect to a Governmental Approval or the performance of the Work to the County within one Day of receipt or mailing by the Contractor.

11. **SAFETY COMPLIANCE**

11.1 **Contractor Actions**

- (a) The Contractor must at all times conduct its operations in such a manner as to avoid risk of bodily harm to employees and other Persons, damage to property and goods, and work interruptions. For these purposes, the Contractor must:
 - (i) following issuance of any Notice to Proceed for an Early Works Package requiring Work at the Worksite, or for the Phase 2 Work and the grant of Access to the Worksite under Section 6.2 (Access to the Worksite), be responsible for Worksite safety during the performance of the Work;
 - (ii) promptly take all reasonable precautions to safeguard against risk of bodily harm to employees and other Persons, damage to property and goods, and work interruptions, and shall make regular safety inspections of its Work activities in accordance with the Construction Safety and Security Manual;

- (iii) comply with the Construction Safety and Security Manual, Applicable Law, and any additional safety provisions under the Project Requirements;
 - (iv) provide suitable personal protective equipment as required under the Construction Safety and Security Manual for any of the Contractor's or its Subcontractors' personnel that are required to visit the Worksite to perform the Work, and enforce the use of such equipment by those personnel;
 - (v) maintain accurate records in accordance with the Construction Safety and Security Manual; and
 - (vi) ensure that its Subcontractors comply with the terms of this Article 11.
- (b) The Contractor shall be solely responsible for the discovery, determination, and correction of any unsafe conditions related to the Contractor's performance of the Work or Goods supplied by the Contractor.

11.2 Cooperation

The Contractor must cooperate and coordinate with the County and with other County Contractors on safety matters, and must promptly comply with any specific safety instructions or directions Notified to the Contractor by the County.

11.3 Corrective action

- (a) The County may at any time, Notify the Contractor of the safety measures the County determines are reasonably necessary for the Contractor and its Subcontractors to take as corrective action to comply with this Article 11 or otherwise with the safety requirements under this Contract, including under the Construction Safety and Security Manual, and immediately upon receipt of such Notice, the Contractor shall perform the required corrective action.
- (b) If:
- (i) the Contractor fails or refuses to take corrective action promptly in accordance with this Section 11.3; or
 - (ii) the Contractor's failure to comply with this Article 11 or otherwise with the safety requirements under this Contract has or may, in the County's judgment, adversely affect the safety of life,

the County may issue a Stop Work Notice suspending the performance of the Work (or a part of the Work) in accordance with Section 17.7 (Suspension) until satisfactory corrective action has been taken as determined by the County, in which case the Contractor will immediately comply with such Stop Work Notice, except to the extent of any corrective action authorized by the County by Notice to continue. The County's issuance of a Stop Work Notice under this Section 11.3 shall not constitute the basis for a Request for Change or Claim, and the Contractor shall be

responsible for all costs, liabilities, and/or delays arising from such Stop Work Notice.

12. CONTRACTOR-FURNISHED DOCUMENTS

12.1 Contractor-Furnished Document Listing & Schedule

- (a) The Contractor shall submit to the County's Authorized Representative, for the County's review and acceptance, a list of Contractor-Furnished Documents to be submitted to the County in relation to the performance of the Work including those Contractor-Furnished Documents that are required to be submitted under this Contract and any additional Contractor-Furnished Documents proposed to be submitted by the Contractor to the County in relation to the Work, and a schedule for submittal of those documents (the "**Contractor-Furnished Document Listing & Schedule**").
- (b) In its Contractor-Furnished Document Listing & Schedule, the Contractor shall distinguish between those Contractor-Furnished Documents required under this Contract to be reviewed and Approved by the County, those additional Contractor-Furnished Documents it proposes should be reviewed and Approved by the County, and those it proposes should be provided to the County for informational purposes only. In addition, the Contractor-Furnished Document Listing & Schedule shall include:
 - (i) a description of any Contractor-Furnished Documents included in the list that are not already described under this Contract, including identifying the contents and purpose;
 - (ii) the planned schedule for submittal of the Contractor-Furnished Documents included in the list, which shall be consistent with the Schedule and any time period for submittal under this Contract;
 - (iii) the required (as required under this Contract) or proposed level of review (in the case of any additional Contractor-Furnished Documents) to be provided by the County with respect to each Contractor-Furnished Document included in the list; and
 - (iv) a description of any required reviews or approvals of Contractor-Furnished Documents by applicable Third Parties under the terms of this Contract.
- (c) The initial Contractor-Furnished Document Listing & Schedule must be submitted by the Contractor to the County's Authorized Representative for the County's review and acceptance as part of the Contractor's Project Management Plan for the Phase 1 Work, and shall include a list of Contractor-Furnished Documents (other than any Design Documents) to be submitted to the County in relation to the performance of the Phase 1 Work, including those Contractor-Furnished Documents that are required to be submitted under this Contract and any additional

Contractor-Furnished Documents proposed to be submitted by the Contractor as part of the collaborative process for Phase 1 described in this Contract.

- (d) The Contractor shall maintain, update, and re-submit its Contractor-Furnished Document Listing & Schedule from time to time (and in any event no less than monthly) so that it is current, and submit any updates to the County's Authorized Representative for the County's review and acceptance. Without limiting the generality of the foregoing, the Contractor must update and resubmit to the County's Authorized Representative for the County's review and acceptance, the Contractor-Furnished Document Listing & Schedule:
 - (i) together with its initial submittal and each subsequent submittal of its Design Management Plan, so as to include all Design Documents required under this Contract or proposed to be furnished by the Contractor;
 - (ii) together with submittal of any Early Works Package Proposal and in any case no later than 30 Days prior to beginning any element of Construction Work under an Early Works Package, so as to include all Construction Documents or other Contractor-Furnished Documents required under this Contract or proposed to be furnished by the Contractor in relation to the Work to be performed under that Early Works Package;
 - (iii) together with submittal of its Phase 2 Proposal and in any case no later than 30 Days prior to beginning any element of Construction Work (not already performed or commenced under an Early Works Package), so as to include all Construction Documents or other Contractor-Furnished Documents required under this Contract or proposed to be furnished by the Contractor in relation to the Phase 2 Work; and
 - (iv) at any other time to take account of events or circumstances which will, or are reasonably likely to, affect the scope of or timing for submittal as set out in, the Contractor-Furnished Document Listing & Schedule, including following a Modification, an update to the Schedule, or as part of any Current CPM Schedule or mitigation action plan submitted under this Contract.
- (e) Unless otherwise specified, all Contractor-Furnished Documents in connection with the Phase 1 Work that the Contractor is required to provide to the County under the Project Requirements and otherwise under this Contract will be subject to review and Approval by the County as part of the ongoing collaborative process for Phase 1 described in this Contract, and each Contractor-Furnished Document Listing & Schedule submitted by the Contractor under this Article 12 shall be prepared in accordance with the requirements under this Section 12.1(e).
- (f) The County will have the right to review and comment on the initial Contractor-Furnished Document Listing & Schedule and each and any update to it, including Notifying the Contractor which of the additional Contractor-Furnished Documents included under the Contractor-Furnished Document Listing & Schedule that are not already within the scope of Section 12.1(e) or otherwise already required under

this Contract to be reviewed and Approved by the County shall be submitted for its review and Approval, and which are for its information only, at the sole discretion of the County.

- (g) The County shall complete its review of the initial Contractor-Furnished Document Listing & Schedule and each and any update to it, issue its comments, and confirm its acceptance or rejection within 15 Days of the County's receipt of a properly-submitted Contractor-Furnished Document Listing & Schedule. If the County does not provide its acceptance or rejection or provide comments within such time period, the Contractor may proceed to submit Contractor-Furnished Documents in accordance with the submitted Contractor-Furnished Document Listing & Schedule, without prejudice to the County's right to comment to the Contractor-Furnished Document & Listing at a later date.
- (h) If the County rejects or provides comments to the Contractor-Furnished Document Listing & Schedule, the Contractor shall update the Contractor-Furnished Document Listing & Schedule to correct any non-conformances or include any County-provided comments, and resubmit the Contractor-Furnished Document Listing & Schedule within seven Days of delivery of the Notice of rejection or comments by the County.

12.2 Contractor submittal

- (a) The Contractor shall submit all Contractor-Furnished Documents to the County's Authorized Representative within the time periods under the accepted Contractor-Furnished Document Listing & Schedule.
- (b) When submitting a Contractor-Furnished Document to the County's Authorized Representative, the Contractor shall clearly note/stamp on the applicable Contractor-Furnished Document "Provided to the County For Information Only" or "Provided to the County For Review and Approval" accordingly, which stamp shall be consistent with the designation under the accepted Contractor-Furnished Document Listing & Schedule.

12.3 County review

- (a) The County will have the right to review and comment on all Contractor-Furnished Documents for compliance with the requirements of this Contract.
- (b) For those Contractor-Furnished Documents which have been designated as requiring the County's review and Approval in accordance with this [Article 12](#) or otherwise under this Contract, the County shall complete its review, issue its comments, and confirm its Approval or rejection, within 30 Days of the County's receipt of a properly-submitted Contractor-Furnished Document (or such other review period for that Contractor-Furnished Document as set out in this Contract or agreed to by the Parties under the accepted Contractor-Furnished Document Listing & Schedule having regard to the level of complexity and size of the Contractor-Furnished Document).

- (c) Unless explicitly stated otherwise in this Contract or agreed to by the Parties under the accepted Contractor-Furnished Document Listing & Schedule, if the County does not provide its Approval for a Contractor-Furnished Document within the applicable review period, the Contractor-Furnished Document shall be deemed rejected.
- (d) This Section 12.3 shall not apply to the County's review of an Early Works Package Proposal or Phase 2 Proposal, which shall be governed by Article 2 (Term and phased work).

12.4 Contractor analysis of the County review comments

- (a) Subject to Section 12.4(b):
 - (i) the Contractor shall Notify the County's Authorized Representative in writing within seven Days after receipt of any County comments to a Contractor-Furnished Document, if the Contractor determines that incorporation of any comment(s) would cause the Contractor-Furnished Document(s) in question to become Deficient in any respect, would amount to a Change, would give rise to a Delay or would otherwise adversely affect in any manner the performance of the Work; and
 - (ii) upon receipt of a Notice from the Contractor, the County will have the right to modify the comment(s) in question.

The Contractor's failure to Notify the County in accordance with this Section 12.4(a) shall constitute the Contractor's full acceptance of the County's comment, the Contractor's full acceptance of all responsibility for resulting changes to the Contractor-Furnished Documents, and the Contractor's full acceptance that the comment does not constitute a Change.

- (b) Prior to execution of any Phase 2 Supplement:
 - (i) the terms of Section 12.4(a) will apply to the extent any County comments to a Contractor-Furnished Document provided as part of the Phase 1 Work would cause a Deficiency in the Phase 1 Work, amount to a Change in the Phase 1 Work (or any Early Works Package under a Modification, as applicable), would give rise to a Delay, or would otherwise adversely affect in any manner the Phase 1 Work (or any Early Works Package under a Modification, as applicable); and
 - (ii) the Contractor must review and evaluate any County comments to a Contractor-Furnished Document provided as part of the Phase 1 Work for the purposes of the preparation of its Phase 2 Proposal, including providing recommendations to the County for different approaches so as to achieve value for money and cost and schedule certainty for the Phase 2 Work. Following receipt of the Contractor's recommendations, the County shall resolve the treatment and approach to the comment as it applies to the

Phase 2 Work and Notify the Contractor of any related assumptions to apply to the Phase 2 Proposal to be submitted under Article 2 (Term and Phased Work).

12.5 Contractor revision and re-submittal

- (a) Unless expressly provided otherwise in this Contract, or otherwise agreed to by the Parties, the Contractor shall revise and modify all Contractor-Furnished Documents to include all the County-provided comments within 14 Days of receipt of the comments (including modifications to previous comments), and resubmit such Contractor-Furnished Document to the County's Authorized Representative for review and Approval by the County in accordance with this Article 12.
- (b) The Contractor shall deliver all final Contractor-Furnished Documents to the County's Authorized Representative.

12.6 Implementation and Compliance

- (a) The Contractor must implement, comply with, and maintain each Approved Contractor-Furnished Document, including updating and submitting any such updates to an Approved Contractor-Furnished Document to the County's Authorized Representative for review and Approval by the County in accordance with this Article 12, as required under this Contract.
- (b) If the Contractor has not updated any Contractor-Furnished Document in accordance with the requirements of this Contract, the County may provide the Contractor a Notice requiring that the applicable Contractor-Furnished Document be updated and specifying the time within which such updating must occur (which must be reasonable, having regard to the amount of work required) and the Contractor must submit the amended or updated Contractor-Furnished Document to the County's Authorized Representative for review and Approval by the County in accordance with this Article 12 within the time specified in such the County Notice.

13. CONTRACTOR'S GENERAL OBLIGATIONS

13.1 Subcontracting

- (a) **Contractor and Subcontractor participation**
 - (i) The Subcontractor Bidding and Selection Plan submitted under Section 13.1(b) (Addition or substitution of Subcontractors) shall include identification of the Phase 2 Work that the Contractor proposes to self-perform with its own forces, and how the Contractor will ensure that the pricing of self-performed Phase 2 Work will be most advantageous to the County. If requested by the County, such procedures shall include soliciting competitive/comparative bids and/or the use of benchmarking data.

- (ii) For the purposes of this Section 13.1(a):
 - (A) where a percentage of the Work is to be subcontracted, the percentage of Work subcontracted shall be based on the estimated cost of that part of the Work as a percentage of the estimated cost of the whole of the Work for that Phase, determined from information submitted by the Contractor and subject to written acceptance by the Contracting Officer; and
 - (B) with the exception of Work performed under a Construction Equipment rental agreement and Goods purchased directly through Suppliers, all Work, Goods, and Equipment furnished by any Person other than the Contractor shall be deemed subcontracted.

(b) **Addition or substitution of Subcontractors**

- (i) This Section 13.1(b) shall apply to the selection of Subcontractors for the performance of the Phase 2 Work as part of the development and agreement of any Phase 2 Proposal (or any Early Works Package Proposal), in addition to the addition or substitution of Subcontractors for the Phase 1 Work or for the Phase 2 Work after execution of a Phase 2 Supplement or any other Modification, as applicable.
- (ii) In accordance with Article 12 (Contractor-Furnished Documents), the Contractor shall submit to the Contracting Officer for review and Approval its Subcontractor Bidding and Selection Plan, which shall include a reasonable procedure for the bidding and approval process applicable to all Major Subcontracts for the Phase 2 Work. Such procedure shall promote pricing of the applicable Work that is fair and reasonable, and be based on full and open competition. If the County Approves the Subcontractor Bidding and Selection Plan, the Approved Subcontractor Bidding and Selection Plan shall be the Contractor's working plan to solicit any bids or proposals for the subcontracting of any part of the Work, including any Early Works Packages and the Phase 2 Work.
- (iii) In soliciting any bids for the subcontracting of any part of the Work, including any Early Works Package and the Phase 2 Work, the Contractor:
 - (A) must comply in a timely manner with any reasonable Requests for Information concerning a proposed Major Subcontractor, the evaluation and award of bids, or other obligations under this Contract concerning bidding and selection of Major Subcontractors for the Phase 2 Work (and any Early Works Package);
 - (B) must, upon Notice by the Contracting Officer, convene a meeting with the County to discuss its bidding and selection procedures and the implementation of the Subcontractor Bidding and Selection Plan; and

- (C) may use the competitive bid procedures used by the County for construction contracts for its selection of subcontractors.
 - (iv) The Contractor shall not, without the County's prior Approval:
 - (A) enter into any additional Major Subcontract not listed as the Subcontractor for the applicable scope of Work in Exhibit 5 (Subcontracting);
 - (B) make any substitution of any Major Subcontractor, whether listed in Exhibit 5 (Subcontracting) or selected in accordance with this Section 13.1(b), for the applicable part of the Work designated to that Major Subcontractor; nor
 - (C) amend any existing Major Subcontracts, whether listed in Exhibit 5 (Subcontracting) or selected in accordance with this Section 13.1(b), resulting in an aggregate increase of 10% or more in the applicable Subcontract price.
 - (v) Requests for Approval of the addition or substitution of a Major Subcontractor:
 - (A) made as part of an Early Works Package Proposal or Phase 2 Proposal shall comply with Section 2.3(c) (Form of the Phase 2 Proposal); or
 - (B) made otherwise under the terms of this Section 13.1 shall include any additional information necessary for the Contracting Officer to make a determination.
 - (vi) The County shall not unreasonably withhold Approval of Subcontractors submitted for Approval under Section 13.1(b)(ii) or (iii), provided that the Contracting Officer has first determined that the Subcontractor:
 - (A) is not debarred or ineligible under Section 13.1(c); and
 - (B) was selected in accordance with the terms of this Section 13.1 and the Approved Subcontractor Bidding and Selection Plan.
 - (vii) The Contractor may enter into Subcontracts with the Subcontractors identified in Exhibit 5 (Subcontracting) and for the scope of Work identified as being allocated to that Subcontractor in Exhibit 5 (Subcontracting) without following the procedures in this Section 13.1(b), but shall not enter into any other Major Subcontracts, except in accordance with such procedures.
- (c) **Debarred Subcontractor**

In accordance with California Public Contract Code Section 6109(a), the Contractor shall not perform Work with any Subcontractor who is ineligible to perform work on

a public works project pursuant to California Labor Code Section 1777.1 or Section 1777.7. In accordance with California Public Contract Code Section 6109(b), any contract on a public works project entered into between the Contractor and a debarred Subcontractor is void as a matter of law. A debarred Subcontractor may not receive any public money for performing work as a Subcontractor on a public works contract, and any public money that may have been paid to a debarred Subcontractor by the Contractor on the Project shall be returned to the County. The Contractor shall be responsible for the payment of wages to workers of a debarred Subcontractor who has been allowed to work on the Project. The County will strictly comply with the Applicable Law, and will act on information related to any debarred Subcontractor in accordance with Applicable Law.

(d) **Flow-down requirements**

The Contractor shall incorporate into each Subcontract, and require insertion into all lower tier Subcontracts, all Required Subcontract Provisions.

(e) **Performance of Work**

- (i) All subcontracting of any part of the Work by the Contractor shall be in strict accordance with this Contract.
- (ii) The Contractor shall coordinate the Work performed by its Subcontractors, and be fully responsible to the County for all acts and omissions of its Subcontractors and their representatives, officers, and employees.
- (iii) Any provision of this Contract referring to the acts or omissions of the Contractor shall also refer to and include the acts and omissions of all Subcontractors.
- (iv) If any part of the subcontracted Work is not performed in accordance with this Contract, or if a Subcontractor commits or omits any act that would constitute a breach of this Contract, the Contractor shall cure the breach, and if directed by the Contracting Officer by Notice, shall replace the Subcontractor and not employ the Subcontractor again for any part of the Work.
- (v) The organization of this Contract into Articles, Sections, paragraphs, subparagraphs, and Exhibits, as well as the arrangement and titles of the Project Requirements, shall not control the Contractor in dividing the Work among Subcontractors, nor in establishing the extent of Work to be performed by any trade.

(f) **Third party beneficiary**

- (i) The Contractor must ensure that the County is a third party beneficiary of all Subcontracts pursuant to which Design Work will be performed.

- (ii) The Contractor must ensure that all Subcontracts pursuant to which Design Work will be performed include the obligation for the Subcontractor to continue to provide services following any expiry of this Contract under Section 2.3(e) (Failure to agree to a Phase 2 Supplement), at the County's option.

(g) **Subcontract administration**

Within 14 Days after execution by the Contractor and applicable Subcontractor (if execution by that Subcontractor is required), the Contractor shall submit to the Contracting Officer complete, unredacted copies of all:

- (i) Major Subcontracts; and
- (ii) change orders, purchase orders, modifications, addendums, or amendments to or under any Major Subcontract.

(h) **No contractual relationship**

Without limiting the Contractor's obligations under Section 13.1(f) (Third party beneficiary), nothing in this Contract will create any contractual relationship between the County and any Subcontractor or any other Contractor-Related Entity, and no Subcontract will impose any obligation or liability upon the County or any other Indemnified Party to any Subcontractor or any other Contractor-Related Entity.

13.2 Performance and Payment Bonds

(a) **Phase 2 Work**

- (i) Concurrently with the execution of each and any Modification for an Early Works Package, the Contractor shall obtain and deliver to the County Performance Bonds and Payment Bonds in compliance with the terms of this Section 13.2 for an amended sum that includes the amount required under this Section 13.2(i) to secure any earlier Modifications for any Early Works Packages, an amount equal to 100% of the applicable Early Works Package Contract Price for that Modification (such that the Performance Bonds and Payment Bonds in effect in the aggregate secure the full scope of any and all Early Works Packages authorized under a Modification).
- (ii) Concurrently with any execution of the Phase 2 Supplement, the Contractor shall obtain and deliver to the County Performance Bonds and Payment Bonds in compliance with the terms of this Section 13.2 for an amended sum that equals an amount equal to 100% of the Phase 2 Contract Price (such that the Performance Bonds and Payment Bonds in effect in the aggregate at any time during Phase 1 secure the full scope of the Phase 2 Work), provided that following issuance of the Certificate of Final Acceptance for the Phase 1 Work, the Contractor may request authorization from the County to

reduce the amount secured to an amount equal to 100% of the Phase 2 Contract Price by submitting a Contractor Initiated Change Proposal under Section 26.1 (Contractor Initiated Change Proposal).

(b) **General requirements**

Any Performance Bonds and Payment Bonds obtained and delivered under this Section 13.2 must:

- (i) be in the amount required under Section (a);
- (ii) be in the form set out in Part A (*Performance Bond*) or Part B (*Payment (Material and Labor) Bond*) (as applicable) of Exhibit 10 (Forms of Security) or such other form as the County may agree in its sole discretion;
- (iii) be issued by a Surety rated at least "A" (excellent or above) according to A.M. Best's Financial Strength Rating and "VII" or better according to A.M. Best's Financial Size Rating;
- (iv) subject to Section 13.2(a)(ii), remain in effect for the entire Term; and
- (v) meet any other requirements of Applicable Law.

(c) **Replacement of Surety**

If the County finds any Surety fails to maintain the required rating or financial size category under Section 13.2(b)(iii), the County may by Notice require that the Contractor replace the Surety and following issuance of such Notice by the County, no further payments shall be due, nor will the County make any payments under this Contract, until a new Surety shall qualify and be accepted by the County. The Contractor shall pay all costs of compliance with this Section 13.2(c).

(d) **Changes in Work or Contract Time**

Changes in the Work or the length of time for Phase 2 made pursuant to this Contract shall in no way invalidate this Contract nor relieve the Contractor or Surety from its obligations under this Section 13.2, and the Contractor shall cause the Surety to waive notice of such Changes.

13.3 Unauthorized Work

- (a) The Contractor shall not perform work in addition to the Work described in this Contract except for any Changed Work.
- (b) Any unauthorized work will not be paid for, will not receive an extension of Contract Time, and may be ordered to be removed at the Contractor's sole expense. The failure of the County to order the removal of unauthorized work shall not constitute acceptance of such work, nor shall it relieve the Contractor from any liability arising from such unauthorized work. If the Contractor does not comply with an order of

the County to remove unauthorized work, the County may remove the unauthorized work at the Contractor's sole expense.

13.4 Reporting

- (a) Without limiting any express reporting requirements set out under the Project Requirements or otherwise under this Contract, the Contractor must collect and preserve each of following types of data in written form contemporaneously during the Contractor's performance of the Work (whether performed during Phase 1 or Phase 2):

(i) **Monthly Utilization Report**

A monthly report summarizing all labor and Equipment utilized to perform the Work during the month, broken down as follows:

- (A) Labor: by classification of management, engineering (if applicable), and other technical and trade personnel used on the job; and
- (B) Material: by (general) major Equipment category.

(ii) **Weekly Utilization Report**

A weekly report of utilized labor and Equipment, broken down by the Contractor and each Subcontractor, as well as by each activity depicted on the Baseline CPM Schedule and which is being actively performed.

(iii) **Daily Log**

A daily log recording and summarizing, in a narrative form, all significant occurrences during the Work, including:

- (A) activity log (a listing of each activity depicted on the Baseline CPM Schedule, which is being actively performed);
- (B) permit issue log (identifying any changes in Governmental Approval status, delays in obtaining Governmental Approvals, and any other issues relating to Governmental Approvals for the Project);
- (C) without limiting the Contractor's obligations under Section 17.5 (Notice of Delays) and Article 24 (Delay Events), a Delay issue log (identifying any unusual inclement weather, asserted Excusable Delay events, and any other event and condition causing or threatening to cause any Delay to the progress of the Work). Notification of a potential Delay under a Delay issue log will not at any time be deemed to constitute Notice of a Delay nor submittal of a mitigation action plan under Section 17.5 (Notice of Delays), nor shall it be considered a submittal of a Request for Change nor a Claim under Section 25.9 (Request for Change) and Article 24 (Delay Events), respectively. Any

and all Notices of a Delay and mitigation action plans following a Notice of a Delay must be submitted by the Contractor in accordance with Section 17.5 (Notice of Delays), and any and all Requests for Change and Claims for an extension of time, additional compensation, or other relief by the Contractor must be submitted in accordance with Section 25.9 (Request for Change) and Article 24 (Delay Events), respectively;

- (D) safety issue log (identifying any significant injuries to persons or property, or events/situations which threaten significant injuries to persons or property); and
- (E) without limiting the Contractor's obligations under Section 25.9 (Request for Change), a potential change alert report (a daily log recording all expenses for labor, materials, and Equipment that are being incurred by reason of any event, condition, or circumstance which the Contractor believes is or may become the subject of a Request for Change). Notification of a potential change under a potential change report will not at any time be deemed to constitute submittal of a Request for Change nor sufficient notice of a Request for Change or a Contractor Initiated Change Proposal under the terms of this Contract. Any and all Requests for Change by the Contractor must be submitted in accordance with Section 25.9 (Request for Change), and any and all Contractor Initiated Change Proposals must be submitted in accordance with Section 26.1 (Contractor Initiated Change Proposal).

- (b) Upon reasonable request by the County, the Contractor shall provide the County with a copy of each log/report described in this Section 13.4.

13.5 **Assignment of Certain Legal Rights**

Without limiting the Contractor's other obligations in Article 33 (Intellectual Property; Ownership; Indemnification), the Contractor hereby agrees that the provisions of California Public Contract Code Section 7103.5(b) and California Government Code Section 4552 are applicable to this Contract, which provide as follows: In entering into a public works contract or a Subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under § 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the Subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the Parties.

PART D – DESIGN AND CONSTRUCTION

14. DESIGN WORK

14.1 Design obligations

- (a) The Contractor must perform the Design Work as is more fully described in the Project Requirements, and do everything required to complete the Design Work in accordance with this Contract.
- (b) The Contractor must perform the Design Work:
 - (i) in accordance with:
 - (A) all Applicable Law and the terms of the applicable Governmental Approvals;
 - (B) the Project Requirements and the other terms of this Contract, including as may be amended by any Modification;
 - (C) the Contractor Commitments; and
 - (D) Good Industry Practice;
 - (ii) taking into account Worksite constraints and other physical limits resulting from constraints affecting the Project; and
 - (iii) so as to complete the Design Work in accordance with any applicable Milestones under the Baseline CPM Schedule.
- (c) This Article 14 shall apply to Design Work performed under the Phase 1 Work and under any Early Works Package incorporating Design Work. If any Deficiencies in the Design Work are identified (whether by the County or the Contractor):
 - (i) during the Term, Article 20 (Remedies for Deficient Work) shall apply; or
 - (ii) during the Warranty Period, Article 21 (Warranties) shall apply.

14.2 Project Requirements

(a) Description and limitations

The County has provided the Contractor the information contained in the Project Requirements, including any documents described in the Project Requirements and may have provided certain design documentation procured prior to the date of this Contract as part of the Reference Documents. Without limiting the generality of Article 9 (Information), the Contractor acknowledges and agrees that:

- (i) any design documentation or design criteria or specifications provided to the Contractor as part of the Reference Documents or Project Requirements are preliminary and conceptual in nature;
 - (ii) the Contractor has full responsibility for the design of the Work and for furnishing the design of the Project, including any design performed by design firm(s) or individuals designated in accordance with Section 5.3 (Key Personnel and other personnel) and Section 13.1 (Subcontracting). Any references in this Contract to the Contractor's responsibilities or obligations to "perform" the Design Work shall be deemed to mean that the Contractor shall "furnish" the design for the Project;
 - (iii) any design documentation provided to the Contractor as part of the Reference Documents is not part of this Contract and the terms of Article 9 (Information) shall apply to it; and
 - (iv) during Phase 1, the Contractor shall:
 - (A) ascertain whether there are any design errors, omissions, inconsistencies, or other defects inherent in the defined Project Requirements, and submit an RFI to the County's Authorized Representative in accordance with Section 5.5(b) (Information Sharing) requesting clarification and information with respect to such potential errors, omissions, inconsistencies, or defects and potential resulting problems; and
 - (B) verify all calculations and quantity takeoffs contained in the Project Requirements or otherwise provided by the County.
- (b) **Definition/ scope of work**
- (i) In accordance with Article 2 (Term and Phased Work) and the Project Requirements, the Parties may negotiate and agree to deviations to the design recommendations or other requirements or constraints under the Project Requirements during Phase 1 as part of any negotiation and agreement of a Phase 2 Supplement or other Modification.
 - (ii) Any other deviation by the Contractor from the design recommendations or other requirements or constraints under the Project Requirements shall require prior written authorization by the County's Authorized Representative or a Modification.

14.3 **Approved for Construction**

- (a) Any Design Document detailing the Final Design Documents for an element of the Work shall only become an AFC Design Document when:
 - (i) the County has Approved the Design Document in accordance with Article 12 (Contractor-Furnished Documents), to the extent such Approval is required in accordance with the terms of this Contract;
 - (ii) any applicable Third Party has approved (and where applicable, stamped) the Design Document, to the extent such approval is required in accordance with the terms of this Contract;
 - (iii) in accordance with Section 10.2(e) (Responsibility for Governmental Approvals), the Contractor has obtained any amendments or modifications to any County-Provided Approvals necessary to reflect the Final Design Documents or has revised the Final Design Documents to satisfy the requirements of the relevant Governmental Approval as granted, if no amendment or modification is granted;
 - (iv) the Design Document has been signed and sealed by the Engineer of Record that is responsible for the Design Document;
 - (v) all other conditions for the Final Design Documents detailed in the Design Document to be ready for construction set out under the Project Requirements have been satisfied; and
 - (vi) the Contractor has approved the Final Design Documents detailed in the Design Document as being ready for construction and has re-issued the Design Document with the notation "Approved for Construction" accordingly.
- (b) Unless an element is clearly noted as otherwise by the Contractor in an AFC Design Document, all of the Work detailed in an AFC Design Document will be interpreted as being approved and ready for construction by the Contractor.
- (c) The Contractor shall be responsible for ensuring that the County's "approval" of the Design Documents as Approved in accordance with this Section 14.3, when applicable, is deemed to constitute "approval" for purposes of California Government Code section 830.6. The Contractor acknowledges and agrees that any such County Approval shall not be deemed to relieve the Contractor of liability for the design of the Project.

15. **CONSTRUCTION**

15.1 **Construction Work**

- (a) Subject to execution of the Phase 2 Supplement (or a Modification for an Early Works Package under which Construction Work is to be performed), the Contractor must perform the Construction Work as is more fully described in the Statement of

Work and the Project Requirements (as modified by any such Modification) and otherwise do everything required to complete the Construction Work in accordance with this Contract.

- (b) Following issuance of a Notice to Proceed for the Phase 2 Work (or for an Early Works Package under which Construction Work is to be performed), the Contractor must perform the Construction Work (or that part of the Construction Work, as applicable):
 - (i) in accordance with:
 - (A) all Applicable Law and the terms of the applicable Governmental Approvals;
 - (B) the Project Requirements and the other requirements of this Contract, as may be amended by any Modification;
 - (C) the AFC Design Documents;
 - (D) the Contractor Commitments; and
 - (E) Good Industry Practice;
 - (ii) taking into account Worksite constraints and other physical limits resulting from constraints affecting the Project; and
 - (iii) so as to achieve Substantial Completion and Final Acceptance and to perform all required tests by the deadlines specified under this Contract.
- (c) If any Deficiencies in the Construction Work are identified (whether by the County or the Contractor):
 - (i) during the Term, Article 20 (Remedies for Deficient Work) shall apply; or
 - (ii) during the Warranty Period, Article 21 (Warranties) shall apply.

15.2 Goods

- (a) Subject to execution of the Phase 2 Supplement (or a Modification for an Early Works Package under which Goods are to be furnished), the Contractor shall furnish all Goods required to complete the Work (or part of the Work, as applicable) except those designated, if any, to be furnished by the County in accordance with this Section 15.2.
- (b) Unless otherwise expressly provided in this Contract, a reference to Goods or patented processes by trade name, make, or catalogue number under this Contract shall be regarded only as a means of establishing a standard of quality, and such references shall not be construed as limiting competition. The Contractor may use any Goods that are Equivalent to those named, to the extent expressly agreed

upon under a Phase 2 Supplement or any other Modification, or under the prior authorization by Notice of the Contracting Officer (which authorization shall be in the sole discretion of the County).

- (c) The Contractor must transport, handle, and store any and all Goods purchased under this Contract in a manner that facilitates inspection and ensures the preservation of its quality, appearance, and fitness for the Work.
- (d) The County may elect or agree to furnish Goods to the Contractor for installation in the Work or other use in carrying out Work under the Contract.
- (e) If the County elects or agrees to furnish Goods to the Contractor in accordance with Section 15.2(d), the County-furnished Goods will be made available as specified in any Phase 2 Supplement or any other Modification.

15.3 **Vacating the Worksite**

Upon vacating the Worksite and as a condition to achieving Substantial Completion (except to the extent that clean-up of the Worksite is to be performed as part of the Punch List) and Final Acceptance of the Phase 2 Work (or any part of it where partial Acceptance is contemplated under Section 18.1 (Partial Acceptance) or in the case of an Early Works Package where Section 18.2(a) (Substantial Completion and Early Works Packages) and Section 18.3(a) (Final Acceptance and Early Works Packages) apply), the Contractor must:

- (a) remove from the Worksite:
 - (i) any waste materials, debris, tools, scaffolding, and Goods that are not the property of the County; and
 - (ii) any temporary office facilities, temporary utility services, and temporary sanitary facilities (except for such temporary facilities as may be specified by the County to remain in place);
- (b) leave the Worksite in a clean, neat, and orderly condition satisfactory to the County or any Third Party or applicable property owner(s) with authority over the Worksite;
- (c) in the case of a Temporary Construction Easement, comply with all obligations or requirements applicable to the vacation or handover of the land, including those obligations defined in Exhibit 6 (Worksite) or otherwise Notified to the Contractor; and
- (d) comply with all other requirements of this Contract, including the Project Requirements, associated with vacating the Worksite.

15.4 Emergencies

- (a) In the event of an Emergency:
 - (i) the Contractor must immediately Notify the County and any applicable Government Entity or other Third Party;
 - (ii) the County may issue instructions to the Contractor to mitigate or contain such Emergency, including issuing a Stop Work Notice suspending the performance of the Work (or a part of the Work) in accordance with Section 17.7 (Suspension) until the event has ended;
 - (iii) the Contractor must immediately comply with any instructions issued by the County with respect to an Emergency, including any Stop Work Notice; and
 - (iv) until receipt of any specific instructions from the County (or any applicable Government Entity or other Third Party) or Stop Work Notice, the Contractor must take appropriate action to mitigate or contain such Emergency in accordance with Good Industry Practice and Applicable Law.
- (b) The Contractor shall only be entitled to time relief and/or additional compensation for its cost of compliance with this Section 15.4, including compliance with any applicable Stop Work Order, to the extent permitted under Section 17.7 (Suspension) (in the case of a Stop Work Notice), Section 24 (Delay Events), and Section 25.9 (Request for Change).

16. QUALITY

16.1 General obligations

The Contractor shall comply with all quality assurance, quality control, and quality management requirements set out in the Project Requirements, and in accordance with Applicable Law and Good Industry Practice.

16.2 Goods

Without limiting the Contractor's obligations under the Project Requirements:

- (a) Goods incorporated into the Work must be new, of good quality, of the grade specified for the purpose intended, and must have the specified capacity, functionality, and features;
- (b) if required under this Contract or upon request by the County by Notice, the Contractor shall promptly (and in any case sufficiently in advance of the time when they are to be used so that any rejection will not cause a Delay), submit to the County for the County's review and acceptance, typical samples of Goods, properly tagged with: Name of Work; Contractor; Goods; Supplier; Location of Work; and Date of submittal;

- (c) the County will Notify the Contractor within 15 Days of receipt of the sample in accordance with this Article 16 if the sample is rejected, in which case the Contractor must re-submit a new sample for the County's review and acceptance in accordance with this Article 16; and
- (d) the County may retain one of each sample accepted by the County in accordance with this Article 16 for its records.

17. CONTRACT TIME

17.1 Date of Commencement

The Contractor must promptly, and in any event within 15 Days following issuance of the relevant Notice to Proceed, commence performance of:

- (a) the Phase 1 Work following issuance of the Notice to Proceed for the Phase 1 Work;
- (b) an Early Works Package subject to and following execution of a Modification for that Early Works Package and issuance of the Notice to Proceed for that Early Works Package; and
- (c) the Phase 2 Work (not yet performed under an Early Works Package) subject to and following execution of a Phase 2 Supplement and issuance of the Notice to Proceed for the Phase 2 Work,

or in the case of Work which is only capable of being performed following grant of Access to the Worksite, following the grant of Access to the Worksite pursuant to Section 6.2 (Access to the Worksite).

17.2 Contract Time

- (a) The Contractor must complete the Work under each Phase to a condition to achieve Final Acceptance within the applicable Contract Time for that Phase, unless this Contract is terminated earlier. In the case where Section 18.3(a) (Final Acceptance and Early Works Packages) applies, the Contractor must complete the Work under any Early Works Package under the Committed Work to a condition to achieve Final Acceptance within the applicable Contract Time for that Early Works Package.
- (b) Without limiting the obligations under Section 17.2(a), the Contractor shall perform the Work, including furnishing sufficient labor (including extra crews) and facilities and working such hours (including extra shifts and overtime operations), so as to achieve completion of a Milestone, the Phase 1 Work, Phase 2 Work, or an Early Works Package to a condition to be Accepted by the County in accordance with this Contract by:
 - (i) in the case of the Phase 1 Work or any Milestone for the Phase 1 Work, the designated dates set out in the Work Completion Schedule incorporated in this Contract as of the Effective Date; and

- (ii) in the case of the Phase 2 Work, any Early Works Package, or any Milestone for the Phase 2 Work or an Early Works Package, the designated dates set out in the Work Completion Schedule for that Work agreed on and incorporated in the Phase 2 Supplement (or any other Modification, as applicable),

in each case, subject to any time extension granted under a Modification.

- (c) The Parties acknowledge and agree that as of the Effective Date, the Work Completion Schedule includes a target Scheduled Completion Date for the Phase 2 Work as of the Effective Date. During Phase 1 and prior to submittal of the Phase 2 Proposal, the Contractor will prepare the schedule for the Phase 2 Work in accordance with this Article 17 and the Project Requirements, and the Parties may discuss and agree on a modification to the Scheduled Completion Date for the Phase 2 Work. The Contractor must take into account any agreement or direction with respect to a modification to the Scheduled Completion Date for the Phase 2 Work in preparing its Phase 2 Proposal. If a modification to the Scheduled Completion Date for the Phase 2 Work is not directed or agreed upon, the Contractor shall prepare and submit the Phase 2 Proposal (and any Early Works Package Proposal) on the basis that Final Acceptance of the Phase 2 Work will be achieved by the target Scheduled Completion Date for the Phase 2 Work.

17.3 Project Schedule

(a) Preparation and submittal

At the times set out under the Work Completion Schedule (if included as a Milestone under the Work Completion Schedule) or otherwise as required under the Project Requirements or this Contract, the Contractor shall prepare and submit to the County for review and acceptance by the County:

- (i) a detailed CPM Schedule for the Phase 1 Work;
- (ii) an updated detailed CPM Schedule to incorporate each Early Works Package; and
- (iii) an updated detailed CPM Schedule to incorporate the full scope of the Phase 2 Work.

In each case, the proposed CPM Schedule submitted to the County shall be prepared by the Contractor in accordance with the Project Requirements. The updated CPM Schedule prepared to incorporate an Early Works Package or the full scope of the Phase 2 Work shall include the additional activities for that Early Works Package or full scope of the Phase 2 Work but shall not include additions, deletions, or modifications to the already accepted Baseline CPM Schedule activities for the Phase 1 Work (or in the case of an update to incorporate the full scope of the Phase 2 Work, to the already accepted Baseline CPM Schedule activities for any Early Works Packages), except to the extent arising from a

Modification and permitted under Section 17.3(c) (*Changes to Baseline CPM Schedule*). Each submission of the proposed CPM Schedule shall be accompanied by such supplementary written information as is required under the Project Requirements, or as the County may otherwise request to adequately evaluate the proposed CPM Schedule. If the proposed CPM Schedule is accepted by the County by Notice (or, in the case of the updated CPM Schedule following the incorporation of an Early Works Package or the full scope of the Phase 2 Work, the Phase 2 Supplement, or any other Modification), it shall become the Baseline CPM Schedule.

(b) **Current CPM Schedule**

After the County's acceptance of the Baseline CPM Schedule, the Contractor must establish, maintain, and deliver to the County the Current CPM Schedule in accordance with the Project Requirements. Each update to the Current CPM Schedule must reflect any pending Modifications, known Delays, or pending Claims of Delay for whatever cause, representing its Time Impact Analysis (if prepared at the time of such update) or otherwise its then-current estimate of the impact to actual performance of the affected Phase or part of the Work.

(c) **Changes to Baseline CPM Schedule**

Without prejudice to Section 17.3(b) (*Current CPM Schedule*), after the County's acceptance of the Baseline CPM Schedule, the Baseline CPM Schedule will only be modified:

- (i) to incorporate an Early Works Package or the full scope of the Phase 2 Work, as contemplated under Section 17.3(a) (*Preparation and submittal*); or
- (ii) otherwise, to the extent authorized under the terms of a Modification.

(d) **Use of Baseline CPM Schedule**

The Baseline CPM Schedule shall be the Contractor's working Schedule and shall be used to: plan, organize, and execute the Work; record and report actual performance and progress; and forecast remaining Work.

(e) **Adverse Weather Days**

- (i) During Phase 1, the Parties shall evaluate the risk of delays to the Phase 2 Work associated with the effects of Adverse Weather Days and agree to, or the County may Notify the Contractor of, the number of Adverse Weather Days (if any) that will be assumed and allocated for the Phase 2 Work.
- (ii) Any Adverse Weather Day allocation agreed to by the Parties or Notified by the County in accordance with Section 17.3(e)(i) shall be taken into account by the Contractor in preparing its Phase 2 Proposal (and any relevant Early

Works Package Proposal) and will be incorporated in any Phase 2 Supplement or any other Modification under this Contract.

- (iii) The Contractor shall account for any Adverse Weather Days allocated for the Phase 2 Work in the Baseline CPM Schedule for the Phase 2 Work (or Early Works Package, as applicable), in accordance with the Project Requirements.

(f) **Float**

Float in the Baseline CPM Schedule and the Current CPM Schedule for a Phase, is not for the exclusive use or benefit of either the County or the Contractor, but is an expiring resource available to both Parties on an as-needed basis.

17.4 **Liquidated damages for Delay**

(a) **Time is of the essence**

TIME IS OF THE ESSENCE IN THIS CONTRACT. The Contractor acknowledges and agrees that the County will sustain damages if the Contractor does not complete the Work within the time periods and by the designated dates under and in accordance with Section 17.2 (Contract Time).

(b) **Types of damages arising from a Delay**

It is and will be impracticable or extremely difficult to ascertain the actual damages that the County will sustain in the event of and by the reason of a Delay. Damages arising out of Delays may arise from or include:

- (i) in the case of a Delay to the Phase 1 Work or an Early Works Package, delays and increased costs for the remaining Phase 2 Work;
- (ii) Contractor's safety violations;
- (iii) failure to implement and monitor environmental mitigation requirements;
- (iv) unreasonable inconvenience to the public and impacts to private property resulting in claims against the County;
- (v) loss of revenue;
- (vi) increased costs for Contract administration; and
- (vii) delays and increased costs to County Contractors resulting in claims to the County.

(c) **Description of liquidated damages**

- (i) The Contractor understands and agrees that if it fails to timely complete the Work in accordance with this Contract, the County will suffer damages, and that it is and will be impracticable or extremely difficult to ascertain the actual damages that the County will sustain in the event of and by the reason of such Delays. Therefore, the Contractor and the County agree to stipulate the amount payable as liquidated damages by the Contractor in the event of its failure to achieve Substantial Completion of the Work under a Phase or to achieve a Milestone to a condition to be Accepted by the County in accordance with this Contract, by the date designated in the Work Completion Schedule, as such 'liquidated damages' term is used in California Government Code Section 53069.85 to the extent such statute may apply, and to constitute stipulated damages to the extent that such statute is not applicable.
- (ii) The amount of any liquidated damages payable under this Section 17.4(c) is or will be (in the case of the Phase 2 Work) set out in the Work Completion Schedule for the applicable Milestone or Phase, and will be payable for each Day of Delay (or fraction of a Day of Delay) in completing that part of the Work in excess of the applicable time specified in the Work Completion Schedule for the applicable Milestone or Phase, subject to any time extension granted under a Modification.
- (iii) The County may deduct the sum of liquidated damages from any Progress Payments due or that may become due to the Contractor, as well as from the retention at the time it is payable to the Contractor; or if such Progress Payments and the retention are insufficient, the Contractor or its Surety shall pay to the County any deficiency.
- (iv) The accrual of liquidated damages will terminate upon the Contracting Officer's issuance of a Certificate of Substantial Completion for the applicable Phase or a Certificate of Partial Acceptance for the applicable part of the Phase 2 Work.
- (v) The liquidated damages specified in this Contract do not include any, and shall not be construed as, penalties.
- (vi) The amount of liquidated damages set out in the Work Completion Schedule represents a good faith estimate as to the actual potential damages that the County would incur as a result of the delay in completion of the applicable Milestone or Phase of the Work.
- (vii) It is understood and agreed by the Contractor that any liquidated damages payable under this Article 17 are reasonable under the circumstances existing as of the date of execution and delivery of this Contract or any applicable Modification that incorporates a change to the liquidated damages due.

- (viii) The maximum liquidated damages for Delay under a Phase for which the Contractor shall be liable under this Article 17 (in aggregate for that Phase) is or will be (in the case of the Phase 2 Work) set out in Exhibit 2 (Work Completion Schedule).

(d) **Remedies not exclusive**

The fact that the County has agreed to accept liquidated damages as compensation for its damages associated with a Delay in the Contractor achieving completion of a Milestone or Phase of Work, shall not preclude the County from exercising its other rights and remedies with respect to any other Delay under this Contract, other than the right to collect other damages due to the Delay, except that the County agrees not to exercise such other rights and remedies with respect to the Delay so long as:

- (i) the then-current Baseline CPM Schedule demonstrates that the Contractor is capable of completing the Work required to achieve completion of a Milestone or Phase of Work in a condition to be Accepted by the County in accordance with this Contract within 180 Days after the date designated for completion under the applicable Work Completion Schedule; and
- (ii) the Contractor diligently performs the Work in accordance with the then-current Baseline CPM Schedule.

17.5 Notice of Delays

- (a) If at any time the Contractor becomes aware of any Delay (whether or not an Inexcusable Delay or an Excusable Delay), the Contractor shall:
 - (i) promptly (and in any event within five Days) after becoming aware of the Delay, give Notice to the County to that effect specifying the reason for the Delay and the initial estimated impact on the Baseline CPM Schedule of such Delay; and
 - (ii) together with any related Request for Change submitted under Section 25.9 (Request for Change) or otherwise within 30 Days of submitting a Notice to the County pursuant to Section 17.5(a)(i) or of identifying a Delay in any monthly progress report or any Current CPM Schedule submitted to the County in accordance with Section 17.3(b) (Current CPM Schedule), deliver a detailed mitigation action plan to the County in accordance with Section 17.6 (Mitigation action plan for Delay).
- (b) If the County becomes aware of a Delay and the Contractor fails to comply with the requirements of Section 17.5(a), the County shall be entitled to issue a Notice to the Contractor requiring that the Contractor deliver a detailed mitigation action plan in accordance with Section 17.6 (Mitigation action plan for Delay) and the Contractor must comply with such Notice by delivering a detailed mitigation action

plan to the County together with any applicable Request for Change or otherwise within 30 Days of receipt of the Notice.

- (c) Notification of a potential Delay under this Section 17.5 or within a Current CPM Schedule or mitigation action plan shall not be considered a submittal of a Request for Change nor a Claim for an extension of time, additional compensation, or other relief under Section 25.9 (Request for Change) and Article 24 (Delay Events) respectively. Any and all Requests for Change and Claims for an extension of time, additional compensation, or other relief by the Contractor must be submitted in accordance with Section 25.9 (Request for Change) and Article 24 (Delay Events) respectively.

17.6 Mitigation action plan for Delay

- (a) Each mitigation action plan which the Contractor must provide pursuant to Section 17.5 (Notice of Delays) must:
 - (i) include full details of:
 - (A) the actions that the Contractor proposes to take to avoid, mitigate, or minimize the consequences of the Delay which shall, in the case of an Excusable Delay, comply with the Contractor's obligations under Section 24.4 (Mitigation), together with details of the impact to the Delay of each of those actions;
 - (B) the additional resources, labor, plant, or equipment (if any) that the Contractor proposes to dedicate to perform each of the proposed actions to avoid, mitigate, or minimize the consequences of the Delay which shall, in the case of an Inexcusable Delay, be at the Contractor's own cost and risk in accordance with Section 24.1 (Inexcusable Delay);
 - (C) in the case of a Compensable Delay, the estimated Mitigation Costs; and
 - (D) the time period within which the Contractor will implement each of the actions described in the proposed mitigation action plan;
 - (ii) be provided together with an updated Current CPM Schedule that reflects the actions and time periods described in the mitigation action plan; and
 - (iii) include any further information reasonably requested by the County.
- (b) If the County rejects in whole or in part a mitigation action plan, the Contractor must amend and resubmit the mitigation action plan (or the part rejected) to the County within 10 Days, after which this Section 17.6 will reapply. In accordance with Section 17.6(d), the County may reject any mitigation actions proposed with respect to a Delay that is a Compensable Delay where the County has elected to

pay Delay Compensation for the applicable unmitigated Days of Delay in lieu of those mitigation actions.

- (c) If the County accepts (in whole or in part) a mitigation action plan submitted by the Contractor, the accepted mitigation action plan (or the accepted part of a mitigation action plan, as applicable) shall be the Contractor's working plan to mitigate the relevant Delay and shall be used to plan, organize, and execute the mitigation activities for the relevant Delay and to record and report actual performance and progress of the mitigation activities for the relevant Delay. If the County fails to accept or reject a mitigation action plan (or a part of it) under Section 17.6(b) within 15 Days of receipt of a duly submitted mitigation action plan by the Contractor, the mitigation action plan (or relevant part of it, as applicable) shall be deemed accepted for the purposes of this Section 17.6(c).
- (d) The Contractor acknowledges and agrees that following receipt of a mitigation action plan that addresses a Compensable Delay and prior to its acceptance of that plan, the County may direct the Contractor by Notice that the County has elected, in its sole discretion, to pay Delay Compensation in lieu of the mitigation actions or a part of the proposed mitigation actions. Following receipt of a Notice under this Section 17.6(d), the Contractor:
 - (i) shall update and resubmit the mitigation action plan and Current CPM Schedule to reflect the removal of the applicable mitigation actions and the adjusted estimate of the Delay;
 - (ii) shall not be required to perform the mitigation actions so removed from the mitigation action plan under the County's direction for the purposes of Section 24.4 (Mitigation); and
 - (iii) shall not be entitled to claim any Mitigation Costs under Section 24.3(c) (Procedure for grant of relief) with respect to any mitigation actions so removed under the County's direction.

17.7 Suspension

- (a) The County may at any time and for any reason within its sole discretion issue a Stop Work Notice or other suspension Notice to the Contractor suspending, delaying, or interrupting all or any part of the Work for a specified period of time (or in the case of a Stop Work Notice, until the Emergency has ended or satisfactory corrective action has been taken in accordance with Section 11.3 (Corrective action)).
- (b) The Contractor shall comply immediately with any Stop Work Notice or other suspension Notice it receives from the Contracting Officer suspending the Work, and unless expressly permitted by the County under the Stop Work Notice or other suspension Notice, shall not incur any costs allocable to the Work covered by the suspension during the period of Work stoppage. To the extent the County permits any continuing costs allocable to the Work covered by the suspension to be

incurred during the period of Work stoppage, the Contractor shall take all reasonable steps to minimize such costs. The Contractor shall continue to perform the Work that is not included in the suspension and shall continue ancillary activities, as reasonably required to preserve property or as otherwise required by the Contracting Officer. The Contractor shall resume performance of the suspended Work upon expiration of the suspension Notice, or upon direction by Notice of the Contracting Officer.

- (c) A Delay arising from a suspension shall constitute a Compensable Delay for the purposes of Article 24 (Delay Events) to the extent that the Delay is shown by the Contractor to be directly attributable to a suspension under this Section 17.7 for reasons beyond the control of the Contractor, provided that:
 - (i) the suspension is not made under a Stop Work Notice issued under Section 11.3 (Corrective action);
 - (ii) the Contractor's performance would not have been Delayed or interrupted by any other cause, including for any breach of this Contract, any Applicable Law, or any Governmental Approval by, or any negligent act or omission of, the Contractor, or for which an extension of time, additional compensation, or other relief is already provided for under this Contract, or is expressly excluded under any other term or condition of the Contract; and
 - (iii) if, during the suspension, the County authorizes the Contractor to incur any costs or perform any Work related to the suspended Work, such authorization shall be by a Notice delivered by the Contracting Officer and shall identify the authorized Work, any staff required to achieve the level of effort authorized, and the not to exceed amount of the authorization. The County will make partial payments up to the not to exceed amount of the authorization against costs incurred by the Contractor in connection with the authorized Work, subject to final determination of the additional compensation or other relief granted under a Modification.

18. **COMPLETION**

18.1 **Partial Acceptance**

- (a) **Agreement or direction of partial Acceptance**
 - (i) The Parties acknowledge and agree that during Phase 1 and prior to submittal of the Phase 2 Proposal (or an Early Works Package Proposal, where applicable):
 - (A) the Contractor may identify any parts of the Phase 2 Work (due to having independent utility, a subcontract being fully completed, an Early Works Package being fully performed, or a Milestone being achieved) that it proposes may be capable of being accepted in advance of the entire Phase 2 Work; and

(B) the County may direct by Notice, or the Parties may discuss and agree to specify, parts of the Phase 2 Work that will be capable of being accepted in advance of the entire Phase 2 Work (due to having independent utility, a subcontract being fully completed, a part of the Third Party Work being capable of acceptance by a Third Party in advance of acceptance of all Third Party Work applicable to that Third Party, an Early Works Package being fully performed, or a Milestone being achieved), together with the requirements for partial Acceptance of such parts of the Phase 2 Work and the effect on the Contractor's responsibility for maintenance during construction and on its Warranty obligations for such parts of the Phase 2 Work.

(ii) The Contractor must take into account any agreement or direction under Section 18.1(a)(i) in preparing its Phase 2 Proposal (and any relevant Early Works Package Proposal), and any such modifications shall be incorporated in any Phase 2 Supplement or any other relevant Modification under this Contract.

(b) **Requirements for partial Acceptance**

The following requirements must be satisfied to achieve partial Acceptance of any elements of the Phase 2 Work that the County has directed or agreed will be capable of partial Acceptance in accordance with this Section 18.1 (the "**Eligible Work**"):

- (i) the Contractor has completed the Eligible Work in accordance with this Contract (except for any Work otherwise only required to be performed for the purposes of achieving Final Acceptance of the full scope of Phase 2 Work, or of the Committed Work where Section 2.3(e) (Failure to agree to a Phase 2 Supplement) applies), including satisfactory completion of any required inspections, tests, and documentation specified in this Contract, and the Eligible Work is ready for use for the purpose intended;
- (ii) all Deficiencies in the Eligible Work have been corrected;
- (iii) to the extent applicable, the Eligible Work has been accepted as complete and ready for use for the purpose intended by any Government Entity or other Third Party with jurisdiction (except to the extent such requirement is agreed to be waived (in whole or in part) under the Phase 2 Supplement or other Modification);
- (iv) to the extent applicable, the Contractor has ensured that the Eligible Work is ready for operation and is capable of being operated without damage to any other Work or property on or off the Worksite, and without injury to any Person;

- (v) to the extent applicable, the Contractor has submitted and the Contracting Officer has received and accepted the assignment of all Subcontractor's Warranties for the Eligible Work;
- (vi) except to the extent the County agrees (in the Phase 2 Supplement or other Modification or in a Notice to the Contractor) to defer this requirement to Final Acceptance of the Phase 2 Work (or of the Committed Work where Section 2.3(e) (Failure to agree to a Phase 2 Supplement) applies), the Contractor has submitted and the Contracting Officer has received and accepted a completed As-Built Schedule, all "As-Built" drawings, and all other deliverables required under this Contract with respect to the Eligible Work;
- (vii) except to the extent required to be retained by the Contractor to continue its obligations to complete the other parts of the Phase 2 Work, all Equipment, special tools, spare parts, or other Goods purchased by the Contractor with respect to the Eligible Work as provided in this Contract have been delivered to and accepted by the Contracting Officer free and clear of all liens; and
- (viii) except to the extent the Contractor will retain Access to the Worksite for the purposes of its continuing obligation to complete the other parts of the Phase 2 Work, the Contractor has complied with all its obligations for vacating and clearing the Worksite under Section 6.2 (Access to the Worksite) and Section 15.3 (Vacating the Worksite).

(c) **Notice**

If the Phase 2 Supplement or any other Modification expressly acknowledges that a part of the Phase 2 Work is capable of partial Acceptance and the Contractor considers that all requirements for partial Acceptance of that part of the Phase 2 Work have been satisfied in accordance with the Phase 2 Supplement or any other relevant Modification, the Contractor shall promptly (and in any case within 10 Days of making its determination) submit a Notice of Partial Acceptance to the Contracting Officer.

(d) **Inspection and certification of partial Acceptance**

- (i) Within 30 Days of delivery of a Notice of Partial Acceptance to the Contracting Officer in accordance with Section 18.1(b) (Notice), the Contractor and the County's Authorized Representative shall make an inspection of the Phase 2 Work that is the subject of the Notice of Partial Acceptance to determine its status of completion.
- (ii) Following completion of the inspection of the applicable part of the Work, the County will determine whether or not the requirements for partial Acceptance have been satisfied and either:
 - (A) if the County Accepts the Phase 2 Work that is the subject of the Notice of Partial Acceptance as complete and determines that the

requirements for partial Acceptance have been satisfied, issue a Certificate of Partial Acceptance to the Contractor; or

- (B) if the County determines that the requirements for partial Acceptance have not been satisfied, reject by Notice the Contractor's Notice of Partial Acceptance, identifying the Deficiencies.
- (iii) If the Contracting Officer rejects by Notice the Contractor's Notice of Partial Acceptance with respect to the applicable part of the Phase 2 Work, the Contractor shall, at its own cost and expense, promptly remedy any Deficiencies (including any deviations and uncompleted Phase 2 Work) and comply with all requirements for partial Acceptance, following which the Contractor shall again deliver a Notice of Partial Acceptance, in accordance with the process under this Section 18.1, until the requirements have been met and a Certificate of Partial Acceptance for the applicable part of the Phase 2 Work has been issued.

18.2 Substantial Completion

(a) Substantial Completion and Early Works Packages

Without limiting the terms of this Section 18.2 as it applies to Substantial Completion of the Phase 1 Work, if Section 2.3(e) (Failure to agree to a Phase 2 Supplement) applies and a Phase 2 Supplement is not executed, Substantial Completion of any Early Works Package under the Committed Work shall follow a procedure similar to that required for Substantial Completion of a Phase under this Section 18.2, modified as specified by the Contracting Officer. If a Phase 2 Supplement is executed by the Parties, this Section 18.2 shall not apply separately to any Early Works Package but shall only apply to Substantial Completion of the Phase 1 Work and Substantial Completion of the Phase 2 Work (including the Early Works Packages under the Phase 2 Work), unless otherwise agreed in the Phase 2 Supplement or applicable Modification for that Early Works Package.

(b) Requirements for Substantial Completion

- (i) The following requirements must be satisfied to achieve Substantial Completion of the Work under a Phase:
 - (A) the Contractor has completed the Work under that Phase in accordance with this Contract (except for Punch List items or Work otherwise only required to be performed for the purposes of achieving Final Acceptance) and the Work under that Phase is ready for use for the purpose intended;
 - (B) all Deficiencies in the Work under that Phase have been corrected (other than Punch List items);

- (C) to the extent applicable, the Work under that Phase has been accepted as complete and ready for use for the purpose intended by any Government Entity or other Third Party (except to the extent such requirement is agreed to be waived (in whole or in part) under the Phase 2 Supplement or any other Modification and except for Punch List items with respect to the Third Party Work that are agreed to by the applicable Third Party); and
 - (D) in the case of Substantial Completion of the Phase 2 Work, the Contractor has ensured that the Work is ready for operation and is capable of being operated without damage to any other Work or property on or off the Worksite, and without injury to any Person.
- (ii) During Phase 1 and prior to submittal of the Phase 2 Proposal, the Parties may agree to, or the County may Notify the Contractor of, adjustments to the requirements for Substantial Completion including: (i) identifying the applicability of and approach to, acceptance by any Government Entity or other Third Party; and (ii) identifying the conditions to ensure that the Work is ready for operation. Any such adjustments agreed to by the Parties or Notified by the County shall be taken into account by the Contractor in preparing its Phase 2 Proposal and will be incorporated in any Phase 2 Supplement.
 - (iii) Acceptance by a Third Party of any Third Party Work (or a part of it) is not equivalent to the County's acceptance of that Third Party Work under this Contract. As stated in Section 18.2(b)(i)(C), acceptance of the Third Party Work by the Third Party is a condition to achieving Substantial Completion but is without prejudice to the other conditions to achieving Substantial Completion under Section 18.2(b)(i), including the requirement that the Contractor has completed the Work in accordance with the Contract and is without prejudice to the County's right of inspection and review under Section 18.2(d) (Inspection and certification of Substantial Completion).

(c) **Notice**

If the Contractor considers all requirements satisfied for Substantial Completion for a Phase under this Contract, the Contractor shall promptly (and in any case within 10 Days of making its determination) submit a Notice of Substantial Completion, together with its list of any elements of the Work under that Phase that remain to be completed after Substantial Completion of the Work and that it proposes be permitted as Punch List items, to the Contracting Officer.

(d) **Inspection and certification of Substantial Completion**

- (i) Within 30 Days of delivery of a Notice of Substantial Completion to the Contracting Officer in accordance with Section 18.2(c) (Notice), the Contractor and the County's Authorized Representative shall make an

inspection of the Work that is the subject of the Notice of Substantial Completion to determine its status of completion.

- (ii) Following completion of the inspection of the Work, the County will determine whether or not the requirements for Substantial Completion have been satisfied and either:
 - (A) if the County Accepts the Work that is the subject of the Notice of Substantial Completion as complete (subject to any Punch List items) and determines that the requirements for Substantial Completion have been satisfied, issue a Certificate of Substantial Completion to the Contractor, together with the Punch List items determined by the County following inspection of the Work; or
 - (B) if the County determines that the requirements for Substantial Completion have not been satisfied, reject by Notice the Contractor's Notice of Substantial Completion, identifying the Deficiencies.
- (iii) If the Contracting Officer rejects by Notice the Contractor's Notice of Substantial Completion with respect to the Work under a Phase, the Contractor shall, at its own cost and expense, promptly remedy any Deficiencies (including any deviations and uncompleted Work) and comply with all requirements for Substantial Completion, following which the Contractor shall again deliver a Notice of Substantial Completion, in accordance with the process under this Section 18.2, until the requirements have been met and a Certificate of Substantial Completion for the Work under that Phase has been issued.

(e) **Completion of the Punch List and other obligations**

- (i) Within 10 Days of issuance of a Certificate of Substantial Completion for a Phase, the Contractor must deliver a Punch List action plan with respect to the Punch List items set out in that Certificate of Substantial Completion to the County including:
 - (A) the actions that the Contractor has taken or will take to complete all Work items on that Punch List, which shall include any actions required by the County under the Certificate of Substantial Completion and with respect to any Punch List items related to Third Party Work, any actions required by the applicable Third Party under the Third Party Requirements; and
 - (B) the time period within which the Contractor will implement each of the actions described in the Punch List action plan in order to achieve Final Acceptance of the Phase by the Scheduled Completion Date for that Phase.

- (ii) Promptly after the issuance of a Certificate of Substantial Completion for the Work under a Phase and in any case in accordance with the Punch List action plan, the Contractor must complete all Work items on the Punch List attached to the Certificate of Substantial Completion, and must satisfy all of its other obligations under this Contract required to be completed prior to Final Acceptance and Final Payment for that Phase, including submittal of all applicable "As-Built" drawings for the Work under that Phase in hardcopy, as well as electronic, submittal, in the form, file format, and quantity specified in this Contract, or otherwise instructed in writing by the Contracting Officer and subject to final review and Approval by the County.
- (iii) After Substantial Completion of the Phase 2 Work, the County will allow the Contractor a reasonable right of entry to the Worksite to complete the items on the Punch List and its other obligations to achieve Final Acceptance.

(f) **Responsibility for Loss, maintenance, and damage**

The County shall be responsible for the maintenance, loss, or damage to the Work under a Certificate of Substantial Completion upon issuance of that Certificate of Substantial Completion or, if the terms of the Certificate of Substantial Completion provide that the custody, control or responsibility for the Work (or a part of it) will remain with the Contractor, upon issuance of a Certificate of Final Acceptance, except in each case that:

- (i) it shall be the Contractor's continuing responsibility to complete and deliver every part, and the integrated whole, of the Work under a Phase and the Work under this Contract in accordance with all of the requirements of this Contract as set out in Section 18.2(e) (Completion of the Punch List and other obligations) and Section 18.4 (Responsibility to complete the Work);
- (ii) responsibility and liability will remain with the Contractor to the extent of the Warranties under Article 21 (Warranties) and the Contractor's other surviving obligations under Section 40.10 (Survival of obligations);
- (iii) responsibility and liability shall remain with the Contractor to the extent that the Contractor's action, negligence, or breach of this Contract or a Warranty causes loss or damage to the Work or any part of it; and
- (iv) the Contractor's responsibility for injury to Persons or property arising from its duties and obligations under this Contract and any payment to the Contractor by the County for any element of the Work, whether or not performed by a Subcontractor or the Contractor, shall survive Acceptance.

18.3 Final Acceptance

(a) Final Acceptance and Early Works Packages

Without limiting the terms of this Section 18.3 as it applies to Final Acceptance of the Phase 1 Work, if Section 2.3(e) (Failure to agree to a Phase 2 Supplement) applies and a Phase 2 Supplement is not executed, Final Acceptance of any Early Works Package under the Committed Work shall follow a procedure similar to that required for Final Acceptance of a Phase under this Section 18.3, modified as specified by the Contracting Officer. If a Phase 2 Supplement is executed by the Parties, this Section 18.3 shall not apply separately to any Early Works Package but shall only apply to Final Acceptance of the Phase 1 Work and Final Acceptance of the Phase 2 Work (including the Early Works Packages under the Phase 2 Work), unless otherwise agreed in the Phase 2 Supplement or applicable Modification for that Early Works Package.

(b) Requirements for Final Acceptance

The following requirements must be satisfied to achieve Final Acceptance of the Work under a Phase:

- (i) the entire Work for that Phase is fully completed, including satisfactory completion of any required inspections, tests, and documentation, specified in this Contract;
- (ii) all Punch List items for that Phase are completed (and any Punch List items for Third Party Work agreed to by the applicable Third Party have been accepted as complete by the applicable Third Party);
- (iii) the Contractor has delivered to the County a certification representing that there are no outstanding Claims with respect to that Phase, together with unconditional releases from all Subcontractors that have filed stop notices during that Phase. The Contractor shall not submit any new Claims with respect to that Phase as of the date of the Request for Final Acceptance of the Work under that Phase; and
- (iv) in the case of Final Acceptance of the Phase 2 Work (or of the Committed Work where Section 2.3(e) (Failure to agree to a Phase 2 Supplement) applies and a Phase 2 Supplement is not executed):
 - (A) the Contractor has submitted and the Contracting Officer has received and accepted the assignment of all Subcontractor's Warranties, a completed As-Built Schedule, all "As-Built" drawings, and all other deliverables required under this Contract;
 - (B) all Equipment, special tools, spare parts, or other Goods purchased by the Contractor as provided in this Contract have been delivered to and accepted by the Contracting Officer free and clear of liens;

- (C) the Contractor has complied with all its obligations for vacating and clearing the Worksite under Section 6.2 (Access to the Worksite) and Section 15.3 (Vacating the Worksite);
- (D) the Contractor has complied with all other requirements associated with closeout of the Contract; and
- (E) the Contractor has delivered to the Contracting Officer a Notice of Completion for the Work under that Phase in recordable form and meeting all statutory requirements.

(c) **Notice**

If the Contractor considers all requirements satisfied for Final Acceptance for a Phase under this Contract, the Contractor shall promptly (and in any case within 10 Days of making its determination) submit a Request for Final Acceptance to the Contracting Officer.

(d) **Inspection and certification of Final Acceptance**

- (i) Following delivery of a Request for Final Acceptance to the Contracting Officer in accordance with Section 18.3(c) (Notice), the Contractor and the County's Authorized Representative shall make an inspection of the Work that is the subject of the Notice to determine its status of completion. If the Contractor does not comply with the obligation for a joint inspection, the County may (at its discretion), perform the joint inspection independently so as to make its determination under Section 18.3(d)(ii) or extend the period of time for the determination under Section 18.3(d)(ii), until after the joint inspection has occurred.
- (ii) Within 60 Days of delivery of a Request for Final Acceptance to the Contracting Officer in accordance with Section 18.3(c) (Notice), the County will determine whether or not the requirements for Final Acceptance have been satisfied and either:
 - (A) if the County determines that the requirements for Final Acceptance have been satisfied, issue a Certificate of Final Acceptance to the Contractor with respect to the Work under the applicable Phase and to the extent applicable in the case of Final Acceptance of the Phase 2 Work (or of the Committed Work where Section 2.3(e) (Failure to agree to a Phase 2 Supplement) applies), record the Notice of Completion with the County Recorder; or
 - (B) if the County determines that the requirements for Final Acceptance have not been satisfied, reject by Notice the Contractor's Request for Final Acceptance, identifying the applicable Deficiencies with the Work under the applicable Phase.

- (iii) If the Contracting Officer rejects the Request for Final Acceptance (or fails to issue a Certificate of Final Acceptance within the specified time period, in which case the Request for Final Acceptance will be deemed rejected), the Contractor shall, at its own cost and expense, promptly remedy the Deficiencies under the applicable Phase and the Contractor shall again deliver a Request for Final Acceptance of the Work under the applicable Phase to the Contracting Officer, in accordance with this Section 18.3.
- (iv) Acceptance by a Third Party of completion of any Punch List items with respect to Third Party Work is not equivalent to the County's acceptance of completion of all Punch List items under this Contract. As stated in Section 18.3(b)(ii) (Requirements for Final Acceptance), acceptance of completion of any Punch List items with respect to Third Party Work by the applicable Third Party is a condition to achieving Final Acceptance but is without prejudice to the other conditions to achieving Final Acceptance under Section 18.3(b) (Requirements for Final Acceptance) and is without prejudice to the County's right of inspection and review under this Section 18.3(d).

18.4 Responsibility to complete the Work

- (a) Notwithstanding any other provision of this Contract that could be interpreted to the contrary (including in any part of this Contract with higher precedence in accordance with its terms), it shall be the Contractor's continuing responsibility to complete and deliver every part, and the integrated whole, of the Work under a Phase (including under an Early Works Package) and the Work under this Contract in accordance with all of the requirements of this Contract.
- (b) The issuance of a Certificate of Partial Acceptance, a Certificate of Substantial Completion, or a Certificate of Final Acceptance by the Contracting Officer for any Phase of the Work or partial Acceptance of any part of the Work, shall not be construed to relieve the Contractor of its responsibility under Section 18.4(a), or any part of that responsibility and:
 - (i) if, after the issuance of a Certificate of Partial Acceptance or a Certificate of Substantial Completion, the County discovers any Deficiency, whether or not the item appears on any Punch List or other list of clean up items, the Contractor shall remedy the Deficiency and bring the Work into full compliance with this Contract as a condition to achieving Final Acceptance; and
 - (ii) if, after the issuance of a Certificate of Final Acceptance, the County discovers any Deficiency, whether or not the item is disclosed by the Contractor, the Contractor shall remedy the Deficiency and bring the Work into full compliance with this Contract to the extent required under Article 21 (Warranties) and its other surviving obligations under Section 40.10 (Survival of obligations).

19. **LIQUIDATED DAMAGES FOR NONCOMPLIANCE EVENTS**

19.1 **General**

- (a) The Contractor understands and agrees that if it fails to perform the Work in accordance with this Contract, the County will suffer damages, and that it is and will be impracticable or extremely difficult to ascertain the actual damages that the County will sustain in the event of and by the reason of a failure by the Contractor to perform certain requirements under this Contract expressly identified and described in this Article 19 (each such expressly identified and described failure, a "**Noncompliance Event**"). Therefore, the Contractor and the County have agreed to stipulate the amount payable as liquidated damages by the Contractor in the event of any Noncompliance Event in this Article 19, as may be amended by a Phase 2 Supplement or any other Modification.
- (b) The County reserves the right to require that the Phase 2 Proposal (or any Early Works Package Proposal) be submitted on the assumption of additional Noncompliance Events or modified Noncompliance Events to be set out in the Phase 2 Supplement (or any other Modification, as applicable).
- (c) Liquidated damages for a Noncompliance Event will not be assessed under this Article 19 to the extent that the Noncompliance Event:
 - (i) arises from an event or occurrence that is a Force Majeure event;
 - (ii) is an event that falls within the definition of Compensable Delay; or
 - (iii) is an event that was otherwise beyond the control of the Contractor, and was not attributable to:
 - (A) any breach of this Contract, any Applicable Law, or any Governmental Approval by the Contractor; or
 - (B) any negligent act or omission of the Contractor.
- (d) The Contractor will have the burden of proving:
 - (i) that a Noncompliance Event arises from an excusing cause under Section 19.1(c);
 - (ii) that the excusing cause could not be fully mitigated notwithstanding the Contractor complying with its obligations under this Contract; and
 - (iii) the duration of the excusing cause's impact on the applicable Contractor obligation under this Contract.
- (e) The County may deduct the sum of any liquidated damages assessed under this Article 19 from any Progress Payments due or that may become due to the Contractor, as well as from the retention at the time it is payable to the Contractor;

or if such Progress Payments and the retention are insufficient, the Contractor or its Surety shall pay to the County any deficiency.

- (f) The liquidated damages for Noncompliance Events specified in this Contract do not include any, and shall not be construed as, penalties.
- (g) The amount of liquidated damages for a Noncompliance Event set out in this Contract represents a good faith estimate as to the actual potential damages that the County would incur as a result of the occurrence of that Noncompliance Event.
- (h) It is understood and agreed by the Contractor that any liquidated damages for Noncompliance Events payable under this Article 19 are reasonable under the circumstances existing as of the date of execution and delivery of this Contract or any applicable Modification that incorporates a change to the liquidated damages due.
- (i) The amount of liquidated damages for Noncompliance Events for which the Contractor shall be liable under this Article 19:
 - (i) with respect to the Phase 1 Work, is limited to a maximum of 10% of the Phase 1 Contract Price in aggregate; and
 - (ii) with respect to the Phase 2 Work, may be limited to a maximum amount set out in the Phase 2 Supplement (or any other Modification).
- (j) If the County collects liquidated damages for a specific Noncompliance Event, the County agrees that it will not seek or collect other damages due to the same Noncompliance Event provided that the foregoing shall not limit:
 - (i) any right of the County to require the Contractor to take corrective action or remedial action under Section 11.3 (Corrective action), Article 20 (Remedies for Deficient Work), or otherwise under this Contract or Applicable Law;
 - (ii) any right of the County to specific performance of any obligation under this Contract;
 - (iii) any right of the County to injunctive relief;
 - (iv) any right of the County or any other Indemnified Party to claim for Losses under Article 27 (Indemnity from the Contractor) with respect to any illness of, personal injury to, or death of, any person or damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property, or any claims by any third party arising from the Noncompliance Event;
 - (v) any other express right of the County pursuant to this Contract, including any right of the County to terminate; or

- (vi) the County's right to claim, on or after termination of this Contract, any Losses incurred by it as a result of rectifying or mitigating the effects of any act or omission of the Contractor pursuant to Section 31.2 (County's right to complete the Work) and Article 27 (Indemnity from the Contractor).
- (k) The right to liquidated damages for a specific Noncompliance Event does not preclude the County from recovering damages or seeking other remedies for other breaches, failures, acts, or omissions of the Contractor, including under Article 20 (Remedies for Deficient Work), Article 21 (Warranties), Article 27 (Indemnity from the Contractor), or Article 30 (Termination for Contractor Default).

19.2 Notice of Noncompliance Event

- (a) The Contractor shall promptly (and in any event within five Days) after becoming aware of a Noncompliance Event, give Notice to the County to that effect specifying the Noncompliance Event (with reference to the relevant Section under this Article 19) and the reason for the Noncompliance Event.
- (b) If the County becomes aware of a Noncompliance Event (whether by way of a Notice delivered by the Contractor or otherwise), the County shall be entitled to issue a corrective action request Notice to the Contractor identifying any required corrective actions and time periods for such corrective actions to be taken by the Contractor with respect to such Noncompliance Event (whether or not the County proceeds to assess or intends to proceed to assess liquidated damages with respect to that Noncompliance Event).
- (c) Within 10 Days of a Notice delivered by the Contractor, or, if earlier, of a corrective action request Notice delivered by the County, in each case under this Section 19.2, the Contractor must deliver a corrective action plan with respect to the applicable Noncompliance Event to the County including:
 - (i) the actions that the Contractor has taken or will take to: rectify or resolve the Noncompliance Event; avoid, mitigate, or minimize the consequences of the Noncompliance Event; and to prevent recurrence of the Noncompliance Event which shall include any corrective actions required under a County corrective action request Notice; and
 - (ii) the time period within which the Contractor will implement each of the actions described in the corrective action plan, which shall comply with any County corrective action request Notice.
- (d) The Contractor will not be required to duplicate a Notice or corrective action plan under this Section 19.2 if it has already submitted an action plan under any other provision of this Contract with respect to the relevant Noncompliance Event.
- (e) The Contractor shall promptly (and in any event within five Days) after rectification or resolution of any Noncompliance Event, give Notice to the County to that effect.

19.3 Liquidated damages schedule – Key Personnel

- (a) Each failure by the Contractor to retain any of the Key Personnel in accordance with Section 5.3 (Key Personnel and other personnel) where a replacement has not been proposed and accepted by the County under Section 5.3 (Key Personnel and other personnel) will result in the Contractor's payment of liquidated damages under this Article 19 in accordance with the following schedule:
 - (i) for the first week when the Key Personnel position remains unfilled: \$20,000; and
 - (ii) for each additional week that the Key Personnel position remains unfilled: \$5,000.
- (b) For any partial weeks when a Key Personnel position remains unfilled, the amount of liquidated damages payable under this Section 19.3 shall be calculated on a pro rata basis.

19.4 Liquidated damages schedule – general conformance

- (a) The occurrence of any Noncompliance Event described under Section 19.4(b) will result in the Contractor's payment of liquidated damages under this Article 19 in accordance with the following schedule:
 - (i) for the first occurrence: \$1,000;
 - (ii) for the second occurrence: \$5,000; and
 - (iii) for each additional occurrence: \$10,000.
- (b) Liquidated damages will be assessed under this Section 19.4 for the occurrence of any of the following Noncompliance Events:
 - (i) while performing Work at the Worksite, the Contractor's work activity noise levels exceed the allowable levels under the local noise ordinance, Project Requirements, Applicable Law, or any Governmental Approval; and
 - (ii) a failure to take corrective action required by the County under a corrective action request Notice delivered by the County under this Article 19 or under a corrective action plan submitted by the Contractor under this Article 19, within the time period set out under that corrective action request Notice or corrective action plan.

19.5 Liquidated damages schedule – safety

- (a) The occurrence of any Noncompliance Event described under Section 19.5(b) will result in the Contractor's payment of liquidated damages under this Article 19 in accordance with the following schedule:

- (i) for the first occurrence: \$5,000;
 - (ii) for the second occurrence: \$10,000; and
 - (iii) for each additional occurrence: \$15,000.
- (b) Liquidated damages will be assessed under this Section 19.5 for the occurrence of any of the following Noncompliance Events:
- (i) the Contractor fails to immediately comply with a Stop Work Notice or any instructions issued by the County with respect to an Emergency; and
 - (ii) the Contractor fails or refuses to take corrective action to comply with Article 11 (Safety compliance) or otherwise with the safety requirements under this Contract as required in accordance with Section 11.3 (Corrective action).

PART E– DEFICIENT WORK AND WARRANTIES

20. REMEDIES FOR DEFICIENT WORK

20.1 County remedies

If, during the Term, any Work provided by the Contractor is Deficient, the County, upon Notice to the Contractor of such Deficiencies, may do any or all of the following:

- (a) reject the Deficient Work and require the Contractor to promptly segregate and remove rejected Work from the Worksite at its own expense and without any extension of Contract Time;
- (b) require the Contractor to re-perform such Work and repair or replace the Work, Goods, or other material or items at the Contractor's own expense;
- (c) accept the Deficient Work without requiring it to be fully remedied and issue a Change Order pursuant to which Section 25.8 (Deleted Work) shall apply to reduce the Contract Price for the applicable Phase (or Early Works Package);
- (d) withhold payments otherwise due to the Contractor under this Contract pursuant to Section 23.3(d) (Additional deductions and set-off);
- (e) assess and seek liquidated damages in accordance with this Contract;
- (f) have such Work performed and Goods provided by others at the sole expense of the Contractor;
- (g) terminate this Contract in accordance with Article 30 (Termination for Contractor Default), and obtain the remedies provided for under that Article; and
- (h) seek any other rights and remedies available under this Contract or Applicable Law.

20.2 **Corrected or re-performed Work**

Corrected or re-performed Work and replaced or repaired Goods shall be subject to all of the requirements of this Contract, including all standards of performance under this Contract.

21. **WARRANTIES**

21.1 **Warranty**

The Contractor warrants that:

- (a) all Design Work depicted in the AFC Design Documents shall meet all requirements of this Contract and conform to all professional architectural and engineering principles and the standard of care adhered to under Good Industry Practice, and the Work shall be constructable as depicted in the AFC Design Documents;
- (b) the Work shall be free of Deficiencies;
- (c) the Work shall be fit for its intended purpose (as defined in Section 1.2(f)(xx) (*Word construction*)); and
- (d) the Goods furnished shall be new and of a quality that meets all of the requirements of this Contract.

With respect to any signed and sealed plans and specifications furnished by the County, the Warranty in Section 21.1(b) shall be limited to construction defects, and the Warranty in clause (c) shall not apply.

21.2 **Commencement and duration**

The Warranties shall commence upon the Warranty Commencement Date and shall remain in effect until one year after the Warranty Commencement Date or such longer period as may be specified in Section 21.5 (*Warranty on corrected Deficiencies*) or otherwise in this Contract ("**Warranty Period**"). Any Subcontractor's warranty period for Work performed or Goods furnished shall be for the longer of (i) the Warranty Period under this Section 21.2 or (ii) the warranty period specified in the particular warranty under the applicable Subcontract.

21.3 **Landscape establishment period**

If the Statement of Work includes installation and planting of landscaping and trees elements and the establishment of these elements after installation and planting has not been expressly retained as a County responsibility under the Statement of Work, the Contractor shall ensure that the landscaping and trees elements are established in accordance with tree care industry best management practices for a period of one year commencing on the Warranty Commencement Date. Any landscaping and/or trees elements deemed Deficient during this establishment period shall be replaced in-kind by

the Contractor at no additional cost to the County, and shall be the responsibility of the Contractor for one additional year, or six months if replaced within the last three months of the initial establishment period. Any additional one year or six month establishment period beyond the initial establishment period will be considered an extended establishment period and apply only to the replaced landscaping and/or trees elements found Deficient during the initial establishment period. Another inspection will be conducted at the request of the Contractor at the end of the extended establishment period to determine Acceptance or rejection.

21.4 **Warranty claims**

- (a) Subject to Section 21.7 (Emergencies during the Warranty Period), if the County determines that any of the Work contains Deficiencies at any time within the Warranty Period, the County may make a Warranty claim and the Contractor shall remedy (whether by repair, replacement, or other remediation) such Work at its sole expense.
- (b) The Contractor shall respond to any County Warranty claim within three Days, and shall remedy the Deficiency within 15 Days of delivery of County's Warranty claim or:
 - (i) following submittal by the Contractor to the County within that 15 Day period of a detailed schedule for completion of repairs or replacement that is accepted by the County, such longer period as may be agreed by the Parties; or
 - (ii) where the Deficiency affects operation of the Work, such shorter period as may be required by the County, in its sole discretion and Notified to the Contractor.
- (c) The Contractor shall diligently proceed to complete the repairs or replacement in accordance with any detailed schedule for completion of repairs or replacement that is accepted by the County in accordance with this Section 21.4.

21.5 **Warranty on corrected Deficiencies**

The Contractor's Warranty shall continue, as to each remedied Deficiency, until the later of:

- (a) the expiration of the Warranty Period; or
- (b) one year after Acceptance by the County of any corrected Work.

21.6 **County's right to correct Deficiencies during Warranty Period**

Subject to Section 21.7 (Emergencies during the Warranty Period), if the Contractor fails to remedy Deficiencies or otherwise comply with the Warranties under this Article 21 or any other Warranty in this Contract, or fails to propose a timely and adequate remedy that is accepted by the County, the County, after Notice to Contractor, may perform or have

performed by a County Contractor the necessary remedy, and the costs of such remediation shall be reimbursed by the Contractor. Any such costs shall be payable to the County within 10 Days after the Contractor's receipt of the County's demand for payment for such costs.

21.7 Emergencies during the Warranty Period

In the case of an Emergency or hazard to health or safety requiring immediate curative action during the Warranty Period, the County will Notify the Contractor, and the Contractor must immediately take appropriate curative action in accordance with Good Industry Practice and Applicable Law. The Contractor must Notify the Contracting Officer of the action(s) taken as soon as possible but no later than three Days after taking such action(s). If the Contractor does not undertake immediate curative action, the County may without prior notice undertake or have a County Contractor undertake such action as is necessary to correct the hazard or deal with the Emergency, and the cost of such action shall be reimbursed by the Contractor. Any such costs shall be payable to the County within 10 Days after the Contractor's receipt of the County's demand for payment for such costs.

21.8 No waiver

Nothing in this Contract shall be construed to constitute a waiver or disclaimer, or limit, negate, exclude, or modify in any way any Warranty in this Contract.

21.9 Acceptance of Deficient Work

- (a) If the County makes a determination to accept any Deficient Work without requiring it to be fully remedied, the County may issue a Change Order and Section 25.8 (Deleted Work) shall apply to reduce the Contract Price for the applicable Phase (or Early Works Package).
- (b) The Contractor shall, in addition to any reduction in the applicable Contract Price under Section 21.9(a), reimburse the County's costs to make the determination, including but not limited to staff costs, experts, tests, and other actions necessary to make a determination. Such reimbursements shall be payable to the County within 10 Days after the Contractor's receipt of the County's demand for payment for such costs.

21.10 Subcontractor's Warranties

- (a) Without in any way limiting the Contractor's Warranties with respect to the Work, the Contractor shall obtain from all Subcontractors, assign, and deliver to the County all warranties, including extended warranties provided by such Subcontractors, and from all other Persons extending warranties with respect to the Work performed or Goods delivered under this Contract. All such warranties shall:

- (i) survive Final Acceptance for the applicable Phase, and all the County and Contractor inspections, tests, and acceptances, and;
 - (ii) run directly to and be enforceable by the Contractor and the County.
- (b) Upon receipt from the County of Notice of a failure of any of the Work to satisfy any Subcontractor warranty or other obligation, the Contractor shall enforce or perform any such warranty or other obligation as a part of the Contractor's other Warranty obligations under this Contract. The County's rights under this Section shall continue until the expiration of the later of the Contractor's Warranty (including extensions for rework) or Subcontractor's warranty or extended warranty. Until such expiration, the cost of any Work (including re-engineering, if applicable) or Goods (including taxes and shipping) required to bring the Work or Goods into conformance with applicable warranty shall be at the sole cost and expense of the Contractor.

21.11 **Spare parts**

The County's spare parts shall not be used to repair warrantable failures without the County's consent by Notice. Unless otherwise directed by the County in its consent Notice, any County spare parts utilized to repair warrantable failures under this Section 21.11 shall be replaced by the Contractor at its sole cost and expense with spare parts of the same or higher quality and specification. The security, control, shipping, and disposition of Contractor-owned parts to repair warrantable failures shall be the responsibility of the Contractor.

21.12 **Other remedies**

- (a) The Warranties are in addition to all rights and remedies available under this Contract or Applicable Law, and shall not limit the Contractor's liability or responsibility imposed by this Contract or Applicable Law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence, or fraud.
- (b) To the extent that any Warranty from any Person other than the Contractor would be voided in whole or part by reason of any act or omission of the Contractor, the Contractor shall be fully liable to the extent of that Warranty.

21.13 **Bond**

To the extent that any Performance Bond remains applicable, the Surety shall be liable to the County under its Performance Bond for any breach of the Contractor's obligations under this Article 21.

21.14 **County Costs**

The County may deduct the sum of any costs payable to the County under this Article 21 from any payments due or that may become due from the County to the Contractor under this Contract.

21.15 **All contract warranties apply**

This Article 21 is not exclusive. Any terms of this Contract containing Warranties, including documents incorporated by reference or relied upon in this Contract, shall apply in accordance with their terms.

PART F – CONTRACT PRICE AND PAYMENTS

22. **CONTRACT PRICE**

22.1 **Contract Price**

(a) **Phase 1 Work**

- (i) In consideration of the Contractor's performance of the Phase 1 Work, and in accordance with this Contract, the County will pay the Contractor the Phase 1 Contract Price of \$4,836,193.
- (ii) There is no guarantee, either expressed or implied, as to the actual dollar amount of the Phase 1 Contract Price that will be payable under this Contract.
- (iii) The Contractor will be paid the Phase 1 Contract Price in accordance with this Article 22, Exhibit 13 (Payment Terms), and all other applicable terms of this Contract.

(b) **Early Works Packages**

If any Modification for the performance of an Early Works Package is executed in accordance with this Contract, then:

- (i) in consideration of the Contractor's full performance of the applicable Early Works Package, and in accordance with this Contract, the County will pay the Contractor the Early Works Package Contract Price under that Modification; and
- (ii) the Contractor will be paid the Early Works Package Contract Price in accordance with this Article 22 and all other applicable terms of this Contract, as modified by that Modification.

(c) **Phase 2 Work**

If a Phase 2 Supplement is executed in accordance with this Contract, then:

- (i) in consideration of the Contractor's full performance of the Phase 2 Work, and in accordance with this Contract, the County will pay the Contractor the Phase 2 Contract Price under the Phase 2 Supplement; and
- (ii) the Contractor will be paid the Phase 2 Contract Price in accordance with this Article 22 and all other applicable terms of this Contract, as modified by the Phase 2 Supplement.

22.2 Markups for Change

- (a) The Phase 2 Contract Price (and any Early Works Package Contract Price unless otherwise agreed by the Parties prior to submittal of the applicable Early Works Package Proposal) will be calculated utilizing the Phase 2 Margin Percentage with respect to the margin (in the aggregate) for the Contractor and any and all Affiliated Subcontractors.
- (b) For all other Modifications, the margins will be applied as set out in Part B (*Basis for establishing costs associated with a Change*) of Exhibit 16 (Principles for estimating and calculation of cost of Changes).

22.3 Contractor Management Fee

- (a) The Contractor Management Fee permitted to be included in the Phase 2 Contract Price (and any Early Works Package Contract Price unless otherwise agreed by the Parties prior to submittal of the applicable Early Works Package Proposal) will be an amount equal to the Phase 2 Management Lump Sum Fee multiplied by the number of weeks under the Contract Time for the Phase 2 Work (or any Early Works Package) subject to any adjustment required in accordance with this Section 22.3.
- (b) The Parties acknowledge and agree that the Phase 2 Management Lump Sum Fee and the calculation under Section 22.3(a) assumes 100% utilization of the Key Personnel throughout the performance of the Phase 2 Work (or any Early Works Package to which it applies). During the Contractor's performance of the Phase 1 Work and prior to the submittal of the Phase 2 Proposal (or an Early Works Package Proposal, as applicable), the Parties will determine the actual utilization requirements for each of the Key Personnel with respect to the performance of the Phase 2 Work (or Early Works Package). If less than 100% utilization of any of the Key Personnel in any week is agreed by the Parties or directed by the County, the fully burdened weekly rate set out in the Contractor Commitments for those Key Personnel will be adjusted downward on a pro rata basis to reflect the actual utilization in each applicable week, the weekly Phase 2 Management Lump Sum Fee will be adjusted downward by a proportionate amount for each applicable week, and the Contractor Management Fee will be an amount equal to the aggregate

adjusted Phase 2 Management Lump Sum Fee payable in each week of the Contract Time for the Phase 2 Work (or an Early Works Package, as applicable).

- (c) To avoid double counting, a deduction shall be applied to the Contractor Management Fee included in the Phase 2 Contract Price (and any Early Works Package Contract Price) to the extent of any costs already included in the Phase 1 Contract Price or the Early Works Package Contract Price for any Early Works Package(s) that have already been authorized under a Modification.

22.4 Allowances

Any allowance items and their corresponding values with respect to the Phase 2 Work will be as set out in any Phase 2 Supplement (or Modification for an Early Works Package, as applicable). Nothing in this Section 22.4 is intended in any way to constitute a commitment to include any allowance in any Phase 2 Supplement (or Modification for an Early Works Package). During the Contractor's performance of the Phase 1 Work, the Parties will determine whether or not to include any allowances for the Phase 2 Work (or any Early Works Package). The County reserves the right to require that the Phase 2 Proposal (or any Early Works Package Proposal) be submitted on the assumption that no allowances will apply.

22.5 Performance incentives and contingency risk sharing

Any performance incentive or contingency risk sharing arrangements with respect to the Phase 2 Work will be as set out in any Phase 2 Supplement (or Modification for an Early Works Package, as applicable). Nothing in this Section 22.5 is intended in any way to constitute a commitment to include a performance incentive or contingency risk sharing arrangement in any Phase 2 Supplement (or Modification for an Early Works Package). During the Contractor's performance of the Phase 1 Work, the Parties will determine whether or not to include any performance incentive or contingency risk sharing arrangements for the Phase 2 Work (or any Early Works Package). The County reserves the right to require that the Phase 2 Proposal (or any Early Works Package Proposal) be submitted on the assumption that no performance incentive or contingency risk sharing arrangements will apply.

23. PROCEDURE FOR PAYMENT

23.1 Payment

- (a) The Phase 1 Contract Price shall be paid to the Contractor by the County based upon the payment terms set out in Part A (*Phase 1 Payment Terms*) of Exhibit 13 (Payment Terms).
- (b) The Early Works Package Contract Price for any Early Works Packages authorized under a Modification shall be paid to the Contractor by the County based upon the payment terms set out in Part B (*Early Works Package Payment Terms*) of Exhibit 13 (Payment Terms) or in the applicable Modification.

- (c) The Phase 2 Contract Price under an executed Phase 2 Supplement shall be paid to the Contractor by the County based upon the payment terms set out in Part C (*Phase 2 Payment Terms*) of Exhibit 13 (*Payment Terms*) or in the Phase 2 Supplement.
- (d) The Contractor shall accept all payments from the County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. The Contractor shall promptly comply with directions and accurately complete forms provided by the County required to process EFT payments.

23.2 Progress Payments

- (a) The Contractor shall submit all Applications for Progress Payments electronically to the County and include:
 - (i) the invoice, dated and identifying the Contract Number;
 - (ii) a description of the Work completed, including the relevant Phase and, if applicable, Early Works Package;
 - (iii) any other documentation that the County requires to process the Progress Payment (including any documentation required under Exhibit 13 (*Payment Terms*));
 - (iv) the signature of the County's Authorized Representative acknowledging that the Work described in the Application has been performed in accordance with this Contract;
 - (v) a payment certification in the form set out in Part A (*Payment Certification (Progress Payment)*) of Exhibit 14 (*Payment and Invoicing Forms*); and
 - (vi) an executed waiver and release forms from its Subcontractors, in the forms set out in Part D (*Conditional Waiver and Release upon Progress Payment*) and Part E (*Unconditional Waiver and Release upon Progress Payment or Final Payment*) of Exhibit 14 (*Payment and Invoicing Forms*).
- (b) The Contractor shall submit each Application for a Progress Payment to the County, based on the applicable payment terms, not later than the 25th Day of each month.
- (c) Upon receipt of an Application for a Progress Payment, the County shall:
 - (i) review the Application, as soon as practicable, to determine if it is complete, correct, and meets the requirements of this Contract in which case payment of that Progress Payment will be made in accordance with Section 23.1 (*Payment*); and
 - (ii) reject and return any Application that the County determines is not complete, incorrect, or does not meet the requirements of this Contract, as soon as practicable, but no later than seven Days after receipt of the Application by

the County, accompanied by a Notice setting out the reasons for the determination.

- (d) If the County rejects and returns any Application under Section 23.2(c)(ii), the Contractor shall correct the Application and re-submit a correct and complete Application for the applicable Progress Payment in accordance with this Section 23.2.
- (e) The County shall have no obligation or liability to pay a Progress Payment to the Contractor under an Application:
 - (i) that has been rejected and returned under Section 23.2(c)(ii) unless and until the Contractor re-submits a correct and complete Application; or
 - (ii) for Work not performed in accordance with this Contract.
- (f) The County will pay each Progress Payment within 30 Days after its receipt of an undisputed and properly submitted Application.
- (g) If the County fails to pay promptly under Section 23.2(f), the County shall pay interest to the Contractor, which accrues at a rate equal to that set forth in California Code of Civil Procedure Section 685.010.

23.3 Retentions, Escrow Accounts, and Deductions

(a) Retention

- (i) Payment shall not be made more often than once each thirty (30) days, nor shall amounts paid be in excess of ninety-five percent (95%) of the Contract Price at time of Final Acceptance. Applications for Payment shall not be deemed properly completed unless certified payrolls and any other mandatory submittals have been properly completed and submitted for each week worked during the time period covered by said payment request. Final payment is to be made sixty (60) days subsequent to filing of Notice of Completion.
- (ii) Under no circumstances shall the retention right under this Section 23.3 nor any other provision of this Contract be construed to limit the ability of the County to withhold 150% of the value of any disputed amount of Work under a Phase from the Final Payment applicable to that Phase, as provided for in California Public Contract Code Section 7107 subdivision (c). In the event of a good faith Dispute, nothing in this Contract shall be construed to require the County to pay for Work that is not approved or accepted in accordance with this Contract.

(b) Substitution of securities

- (i) The Contractor may, upon the Contractor's written request, and approval by the Board of Supervisors, at the Contractor's expense, deposit substitute

securities, as stated in Government Code Section 16430, and as authorized by Public Contract Code 22300, in lieu of retention monies withheld to insure performance.

- (ii) Such securities shall be deposited with an escrow agent approved by the County, who shall then pay such retention to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor.
- (iii) The Contractor shall be the beneficial owner of any security substituted for monies withheld and shall receive any accrued interest on any substitute securities. Securities eligible for investment shall include those listed in California Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the County. No such substitution shall be accepted until the escrow agreement, securities, and any other documents related to the substitution are reviewed and accepted in writing by the County.
- (iv) If a Subcontractor elects to substitute securities in lieu of retention with the Contractor, then, in accordance with Section 23.5 (Payment to Subcontractors), when the Contractor certifies to the County that all tasks called for in the Subcontract have been satisfactorily accomplished and the County has inspected the Work in accordance with Section 23.5 (Payment to Subcontractors), the Contractor shall release the Subcontractor's securities within 10 Days after receipt of the County Notice of the completed inspection, even though there may be no adjustment(s) to be made to the Contractor's substitute securities in lieu of retention.
- (v) If the Contractor elects to substitute securities in lieu of retention and a Subcontractor has not elected to substitute securities in lieu of retention, the Contractor may withhold from the Subcontractor the amount of retention allowable, provided that in accordance with Section 23.5 (Payment to Subcontractors), when the Contractor certifies to the County that all tasks called for in the Subcontract have been satisfactorily accomplished and the County has inspected the Work, the Contractor shall release the Subcontractor's securities within 10 Days after receipt of Notice from the County of the completed inspection, even though there may be no adjustment(s) to be made to the Contractor's substitute securities in lieu of retention.

(c) **Payment to Escrow Agent**

- (i) In lieu of substitution of securities as provided above, the Contractor may request and the County shall make payment of retention earned directly to the escrow agent described in Section 23.3(b) (Substitution of securities), at the expense of the Contractor. At the expense of the Contractor, the

Contractor may direct the investment of the payments into securities consistent with California Government Code Section 16430, and the Contractor shall receive the interest earned on the investments upon the same terms provided for in this Section 23.3 for securities deposited by the Contractor. Upon satisfactory completion of the Contract, the Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the County, pursuant to the terms of this Section 23.3.

- (ii) The Contractor shall pay to each Subcontractor, not later than 20 Days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount of retention withheld to ensure the performance of the Subcontractor. The escrow agreement used by the escrow agent pursuant to this Section 23.3 shall be substantially similar to the form set out in California Public Contract Code Section 22300.

(d) **Additional deductions and set-off**

- (i) The County may set-off or deduct any amount due and payable by the Contractor to the County under this Contract from and against any amounts payable by the County to the Contractor under this Contract. The County's right of set-off includes all amounts paid by the County to satisfy, discharge, and defend against any claim including any stop payment notice or any other demand for payment or security made or filed with the County, the County's property, or the Project, by any Person claiming that any Contractor-Related Entity has failed to perform its contractual obligations or to make payment for any obligation incurred for or in connection with the Work, provided that no such set-off shall be made if the Contractor has filed surety bonds fully releasing the County and the County's property from such claim under Applicable Law.
- (ii) Without limiting the generality of Section 23.3(d)(i), the County may deduct from each Progress Payment any or all of the following:
 - (A) liquidated damages that have accrued under this Contract as of the date of the Application for Progress Payment;
 - (B) sums expended by the County in remedying a Deficiency in accordance with this Contract;
 - (C) sums that the County is entitled to recover under a Change Order issued pursuant to Section 25.8 (Deleted Work);
 - (D) sums that the County is entitled to recover under Article 27 (Indemnity from the Contractor); and

- (E) other sums that the County is entitled to recover from the Contractor under this Contract.
- (iii) The failure of the County to deduct any of the above-identified sums from a Progress Payment shall not constitute a waiver of the County's right to such sums or to deduct them from a later Progress Payment.

23.4 Final Payment

(a) Application for Final Payment

Prior to Final Acceptance of a Phase, the Contractor shall prepare and electronically submit an Application for Final Payment under that Phase, marked "FINAL – PHASE [1]/[2]", to the County including:

- (i) the proposed total amount due the Contractor, segregated by items on the payment terms, Modifications, and other bases for payment;
- (ii) deductions for prior Progress Payments;
- (iii) amounts retained;
- (iv) written acknowledgement from each Subcontractor that the Contractor has paid to the Subcontractor any and all penalties due to the Subcontractor pursuant to California Business and Professions Code Section 7108.5; and
- (v) a list of any pending unsettled Claims, stating claimed amounts.

(b) Review

The County will review the Contractor's Application for Final Payment and will forward any required changes or corrections to the Contractor. Within seven Days after receipt of required changes from the County, the Contractor will make the changes, and shall submit the revised Application for Final Payment in accordance with this Section 23.4. Upon acceptance by the County, the revised Application for Final Payment will become the approved Application for Final Payment.

(c) Final Payment

The County will pay the entire sum found due on the approved Application for Final Payment, including the amount, if any, allowed on settled Claims upon satisfaction of the following conditions:

- (i) Final Acceptance has been achieved for that Phase;
- (ii) the County and the Contractor have reached agreement on all issues regarding the Application for Final Payment;
- (iii) the Contractor has delivered to the County:

- (A) a payment certification in the form set out in Part B (*Payment Certification (Final Payment)*) of Exhibit 14 (*Payment and Invoicing Forms*); and
 - (B) an executed waiver and release in the form set out in Part C (*Release of Claims*) of Exhibit 14 (*Payment and Invoicing Forms*); and
 - (iv) the Contractor has caused its Subcontractors to complete, and has delivered to the County, executed waiver and release forms, in the form attached in Part E (*Unconditional Waiver and Release upon Progress Payment or Final Payment*) of Exhibit 14 (*Payment and Invoicing Forms*).
- (d) **Discovery of Deficiencies or improper payment**

Without limiting Section 40.10 (*Survival of obligations*) or the County's rights under Applicable Law, neither the County's acceptance of the Application for Final Payment nor Final Payment shall prevent the County from asserting its rights:

- (i) under Article 21 (*Warranties*) or otherwise under Applicable Law if the County discovers a Deficiency; or
- (ii) if the County discovers that a previous payment, or part of a previous payment, for Work was improperly made.

23.5 **Payment to Subcontractors**

(a) **Progress Payments**

The Contractor shall pay each Subcontractor, as required by California Business and Professions Code Section 7108.5, for any and all undisputed amounts in properly submitted payment requests for Work performed under its Subcontract no later than seven Days after its receipt of each Progress Payment from the County for Work performed under the Contract.

(b) **Final payment to Subcontractors**

The Contractor shall pay to each Subcontractor all amounts it has retained from payments under the applicable Subcontract within seven Days after the Subcontractor's Work is satisfactorily completed, and receipt of payment from the County or release of substituted securities by the County. To the extent expressly agreed upon as a partial Acceptance under Section 18.1 (*Partial Acceptance*) or otherwise following a request by the Contractor, the County may arrange for incremental inspection and acceptances of portions of the Work, and provide for release of a share of retention (or substituted securities) associated with such Work to facilitate release of retention by the Contractor to Subcontractors who have satisfactorily completed their Work or completed increments of their Work. Except to the extent expressly agreed upon as a partial Acceptance under Section 18.1 (*Partial Acceptance*) (in which case Section 18.1 (*Partial Acceptance*) shall apply),

such incremental acceptances and associated releases of retention (or release of substituted securities) shall be in the discretion of the County, and shall follow a procedure similar to that required for Substantial Completion, modified as specified by the Contracting Officer. Such acceptances and releases (i) shall be for the limited purpose of releasing Subcontractor retention; (ii) shall in no way change Contractor's responsibility for maintenance during the construction, its responsibilities under Section 18.2(f) (Responsibility for Loss, maintenance, and damage), or its Warranty obligations under the requirements of this Contract; (iii) shall not commence any Warranty obligations; (iv) shall not waive any rights of the County with respect to any Work that is later determined to be unsatisfactory; and (v) shall not limit any remedies of the County under this Contract or otherwise.

(c) **Withholding**

In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the Contractor to a Subcontractor, the Contractor may withhold no more than 150% of the disputed amount.

(d) **Failure to comply**

Without prejudice to any other sanctions under Applicable Law, if the County determines that the Contractor has failed to comply with this Section 23.5, the County may give Notice of the default to the Contractor and the Contractor's Surety, and if the default is not cured as provided in Article 30 (Termination for Contractor Default), this Contract may be terminated for default in accordance with its terms, or the County may exercise any other remedy it has under this Contract or Applicable Law.

23.6 Taxes

- (a) Unless otherwise specifically provided in this Contract, the Contract Price includes compensation for all taxes the Contractor is required to pay under Applicable Law in effect on the Applicable Proposal Date.
- (b) The Contractor shall pay all federal, State, and local taxes, and duties applicable to and assessable against any Work, including but not limited to retail sales and use, transportation, export, import, business, and special taxes. The Contractor shall ascertain and pay the taxes when due. The Contractor will maintain auditable records, subject to the County's reviews, confirming that tax payments are current at all times.

PART G – SUPERVENING EVENTS

24. DELAY EVENTS

24.1 Inexcusable Delay

The Contractor shall not be entitled to submit a Request for Change or Claim for any additional Contract Time, any other extension of time, compensation, or other relief for an Inexcusable Delay, and an Inexcusable Delay may give rise to liquidated damages for delay under Section 17.4 (Liquidated damages for Delay) and a County's right of termination under Article 30 (Termination for Contractor Default), in addition to all other rights and remedies available to the County under this Contract or Applicable Law.

24.2 Excusable Delay

(a) Definition

A Delay to the Work shall be an "**Excusable Delay**" with respect to a Phase where the performance of all or any part of that Work under that Phase is Delayed by an occurrence or event that:

- (i) has caused, or will result in, an identifiable and measurable disruption of the Work under that Phase which has consumed all available Float for that Phase and extended the Work required for achievement of a Milestone, Substantial Completion, or Final Acceptance for that Phase beyond the applicable completion deadline;
- (ii) is a Force Majeure event, falls within the definition of Compensable Delay, or is an event that was otherwise beyond the control of, and was not attributable to any breach of this Contract, any Applicable Law, or any Governmental Approval by, or any negligent act or omission of, the Contractor;
- (iii) is not excluded from Excusable Delay under any provision of this Contract; and
- (iv) has no specific remedy provided under any other provision of this Contract.

(b) Entitlement to relief

- (i) The Contractor will be entitled to an extension of time to the applicable date(s) in the Work Completion Schedule for the affected Milestone or Phase of Work under the Work Completion Schedule, and will not be assessed for liquidated damages for Delay only to the extent of an Excusable Delay, provided that the Contractor has satisfied all of the following:
 - (A) complied with its Notice obligations under Section 17.5 (Notice of Delays);

- (B) complied with the procedure under Section 24.2(c) (Procedure for grant of relief);
 - (C) complied with its mitigation obligations under Section 24.4 (Mitigation); and
 - (D) provided adequate proof and demonstrated to the reasonable satisfaction of the County that it has met its burden of proof under Section 24.5 (Burden of proof).
- (ii) The Contractor will not receive any compensation and will not be entitled to claim any compensation for an Excusable Delay unless it is also a Compensable Delay entitling the Contractor to compensation pursuant Section 24.3 (Compensable Delay).
- (c) **Procedure for grant of relief**
- (i) Any request for an extension of time on the basis of an Excusable Delay for which no Change Notice or Change Order has been issued by the County, shall be submitted by the Contractor to the County as a Request for Change in accordance with Section 25.9 (Request for Change).
 - (ii) To the extent that the County accepts a Delay as an Excusable Delay, it will grant an extension of time to the applicable date(s) in the Work Completion Schedule for the affected Milestone or Phase of Work under the Work Completion Schedule to the extent of the Excusable Delay by way of a Modification in accordance with this Contract.
 - (iii) If the Contractor disputes any County determination with respect to a request for an extension of time under Section 25.9 (Request for Change), the Contractor may submit a Claim under Section 37.1 (Claims).

24.3 Compensable Delay

(a) **Definition**

An Excusable Delay shall be a "**Compensable Delay**" with respect to Phase 2 where the performance of all or any part of the Phase 2 Work is Delayed by:

- (i) a breach of this Contract by the County not otherwise expressly described in this definition of Compensable Delay unless the breach arises from a Force Majeure event or any other event that was otherwise beyond the control of, and was not attributable to any breach of this Contract, any Applicable Law or any Governmental Approval by, or any negligent act or omission of, the County;
- (ii) a failure of the County or a Third Party to act within the time specified in this Contract, or within a reasonable time if not specified unless this Contract provides for a deemed approval, acceptance, rejection or other action in the

event that the County fails to act or is delayed in acting and provided that the Contractor has provided properly submitted Contractor-Furnished Documents, or otherwise supplied all information or materials required;

- (iii) a failure to obtain a County-Provided Approval or withdrawal, revocation, suspension, invalidation, or lapse of any County-Provided Approval prior to the expiry date for that County-Provided Approval stated in the Project Requirements or in that County-Provided Approval;
- (iv) a failure by the Contractor to obtain, extend, or renew a Governmental Approval that is the responsibility of the Contractor under this Contract within 30 Days of the expiry of the period for review stipulated in the Project Requirements or under Applicable Law (or, if none is stipulated, a review period of 60 Days), provided that the Contractor has complied with all of its obligations under Article 10 (Law, regulatory requirements and approvals) and otherwise under this Contract and Applicable Law with respect to that Governmental Approval; the Contractor has properly submitted its complete application and all other supporting information for the Governmental Approval as determined by the applicable Government Entity; the failure does not arise from the proper exercise of a right to reject by the applicable Government Entity; and the Contractor and any relevant Subcontractor is a valid, authorized applicant;
- (v) a failure to deliver any County-furnished Goods within the time specified in this Contract, or within a reasonable time if not specified under this Contract;
- (vi) any suspension of the Phase 2 Work that constitutes a Compensable Delay pursuant to Section 17.7(c) (Suspension); and
- (vii) a Differing Site Condition as determined under Section 7.3(c) (County's responsibility and determination) or Section 7.4(c) (County's responsibility and determination),

except in each case to the extent: (A) that the act or failure is expressly excluded from Compensable Delays under any provision of this Contract; (B) that a specific remedy for that act or failure is provided for under any other provision of this Contract; or (C) attributable to any breach of this Contract, any Applicable Law, or any Governmental Approval by, or any negligent act or omission of, the Contractor.

(b) **Entitlement to relief**

The Contractor will be entitled to Delay Compensation, Mitigation Costs (to the extent applicable), and/or other permitted costs (in the case of a Differing Site Condition only) to the extent of an Excusable Delay that is also a Compensable Delay in accordance with Section 24.3(a), provided that the Contractor has satisfied all of the following:

- (i) complied with its Notice obligations under Section 17.5 (Notice of Delays);

- (ii) complied with the procedure under Section 24.3(c) (Procedure for grant of relief);
 - (iii) complied with its mitigation obligations under Section 24.4 (Mitigation); and
 - (iv) provided adequate proof and demonstrated to the reasonable satisfaction of the County that it has met its burden of proof under Section 24.5 (Burden of proof).
- (c) **Procedure for grant of relief**
- (i) Any request for Delay Compensation on the basis of an Excusable Delay that is also a Compensable Delay for which no Change Notice or Change Order has been issued by the County, shall be submitted by the Contractor to the County as a Request for Change in accordance with Section 25.9 (Request for Change).
 - (ii) To the extent that the County accepts a Delay as an Excusable Delay that is also a Compensable Delay, it will adjust the Contract Price (excluding profit) for the applicable Phase, calculated as follows:
 - (A) unless the Delay has been fully mitigated, the Delay Compensation calculated as applicable to the Phase (or Early Works Package);
 - (B) subject to Section 17.6(d) (Mitigation action plan for Delay), the Mitigation Costs for any mitigation actions implemented to mitigate that Compensable Delay in accordance with a mitigation action plan accepted or deemed accepted by the County under Section 17.6 (Mitigation action plan for Delay); and
 - (C) in the case of a Differing Site Condition, any other increase or decrease in costs calculated with respect to any Change in the Work caused by the Differing Site Condition and not part of a Claim for any Delay Compensation or Mitigation Costs (if applicable) or a Change Notice or Change Order issued by the County, as permitted under Section 25.9 (Request for Change),in addition to the grant of an extension of time under Section 24.2(c) (Procedure for grant of relief) by way of a Modification in accordance with this Contract.
 - (iii) If the Contractor disputes any County determination with respect to a request for Delay Compensation, Mitigation Costs, or other costs (if applicable with respect to a Differing Site Condition) under Section 25.9 (Request for Change), the Contractor may submit a Claim under Section 37.1 (Claims).

- (iv) The Contractor will not receive any compensation and will not be entitled to claim for a Compensable Delay to the extent of:
 - (A) any costs incurred more than five Days before the Contractor shall have notified the Contracting Officer of the act or event causing the Delay in accordance with this Contract; and
 - (B) in accordance with Section 40.4 (No double recovery), any Losses covered by the proceeds of insurance carried by the Contractor or that are required to be insured against, pursuant to Article 28 (Insurance Requirements) (whichever is greater).

24.4 Mitigation

The Contractor shall use Reasonable Efforts to mitigate the Delay and any other consequences of any Delay that is asserted as an Excusable Delay or Compensable Delay including resequencing, reallocating, or redeploying its forces to other parts of the Work and implementing any other mitigation actions under any mitigation action plan for that Delay accepted or deemed accepted by the County under Section 17.6 (Mitigation action plan for Delay).

24.5 Burden of proof

The Contractor will have the burden of proving that a Delay has occurred, that the Delay was an Excusable Delay and, if applicable, also a Compensable Delay, the Delay could not be fully mitigated notwithstanding the Contractor complying with its obligations under this Contract, and the duration of the Delay.

24.6 Concurrent Delay

- (a) The Contractor will not be entitled to any compensation under this Article 24 (but may be entitled to claim an extension of time in accordance with its terms) with respect to any period of time during which there is a concurrent delay pursuant to which the Contractor encounters an Excusable Delay (whether or not a Compensable Delay) but, for that same period of time, the Contractor or a Contractor-Related Entity has caused its own Inexcusable Delay.
- (b) The Contractor will not be entitled to claim any compensation under this Article 24 (but may be entitled to claim an extension of time in accordance with its terms) with respect to any period of time during which there is a concurrent delay pursuant to which the Contractor encounters a Compensable Delay but, for that same period of time, the Contractor or a Contractor-Related Entity encounters an Excusable Delay that is not a Compensable Delay.
- (c) A Delay will not be considered a concurrent Delay for the purposes of this Section 24.6 to the extent that one Delay affects the Baseline CPM Schedule and the other Delay does not. In that event, the sole Delay will be the one that affects the Baseline CPM Schedule.

24.7 Delay due to shortage of Goods

(a) No Compensable Delay

Except for a delay in delivery by the County of County-furnished Goods (which may constitute a Compensable Delay if it meets all other qualifying criteria and conditions), a shortage of Goods shall not constitute a Compensable Delay.

(b) Excusable Delay due to shortage of Goods

- (i) Contractor may be entitled to an Excusable Delay if, in addition to meeting all other requirements for an Excusable Delay:
 - (A) it supplies the County with documented proof that it made every effort to obtain such Goods from every known source within reasonable distance of the Work; and
 - (B) the inability to obtain such Goods when originally planned, did in fact cause a Delay in final completion of the Work that could not be fully mitigated by revising the sequence of its operations.
- (ii) Only the physical shortage of Goods will be considered as a basis for an Excusable Delay. No consideration will be given to any claim that Goods could not be obtained at a reasonable, practical, or economical cost.

24.8 No County waiver

The County's granting of an extension of time, Delay Compensation or any other relief from the Contractor's obligations under this Contract shall not constitute a waiver of any of the County's rights under this Contract other than those specifically provided for in a Modification executed under the terms of this Article 24.

24.9 No release of Surety

An extension of time granted shall not release the Contractor's Surety from its obligations.

24.10 Sole remedy

- (a) The Contractor's sole remedy in relation to any Excusable Delay or Compensable Delay will be the operation of this Article 24.
- (b) Where a daily rate is used to calculate the Delay Compensation for a Compensable Delay:
 - (i) the daily rate shall constitute the total amount of daily compensation the County shall pay to the Contractor for all direct and indirect costs associated with that Compensable Delay (including for all labor, plant, and equipment required to perform the applicable part of the Work for the duration of the Delay but excluding, where applicable, any Mitigation Costs or costs

calculated with respect to any Change in the Work caused by the Differing Site Conditions pursuant to Section 24.3(c)(ii)(C) (Procedure for grant of relief); and

- (ii) the Contractor agrees that the daily rate is reasonable and was fairly calculated and adequately compensates the Contractor for any Compensable Delay.
- (c) Section 40.4 (No double recovery) shall apply such that the Contractor shall not be entitled to include any Costs in an Early Works Package that it is already compensated for (or is already entitled to be compensated for) under the Phase 1 Contract Price (including any Modification to that Phase 1 Contract Price, whether by operation of this Article 24 or otherwise).

25. COUNTY CHANGES

25.1 General

- (a) Article 2 (Term and Phased Work) sets out a process by which a Phase 2 Supplement (and any Modification for an Early Works Package) can be discussed and, potentially, agreed upon and executed by the Parties.
- (b) This Article 25 applies to any Changes proposed by the County to:
 - (i) the Phase 1 Work; or
 - (ii) the Phase 2 Work following execution of a Phase 2 Supplement (or, in the case of an Early Works Package, following execution of an applicable Modification).

25.2 County Change Notice

- (a) The County may, at any time, propose a Change in the Work by issuing a Notice to the Contractor (a "**Change Notice**") describing the County's proposed change(s) to this Contract, and requesting that the Contractor provide a Cost and Schedule Proposal in accordance with Section 25.3 (Cost and Schedule Proposal).
- (b) A Change Notice does not authorize the Contractor to commence performance of the proposed Changed Work. Any Changed Work authorized by the County will be incorporated into a Modification.

25.3 Cost and Schedule Proposal

- (a) Promptly and, in any event within 30 Days after the Contractor receives a Change Notice, the Contractor shall deliver to the County an estimate of costs and expenses and other matters with respect to such Change (a "**Cost and Schedule Proposal**" or "**CSP**") that complies with Part B (*Basis for establishing costs associated with a Change*) of Exhibit 16 (Principles for estimating and calculation of cost of Changes).

- (b) In preparing the Cost and Schedule Proposal, the Contractor shall:
- (i) use the forms provided and the components set out in Part B (*Basis for establishing costs associated with a Change*) of Exhibit 16 (Principles for estimating and calculation of cost of Changes) to identify any Change in Costs (calculated in accordance with Part B (*Basis for establishing costs associated with a Change*) of Exhibit 16 (Principles for estimating and calculation of cost of Changes)) as a result of implementing the Change, including the mark-ups permitted for overhead and profit under this Contract provided that in the case of a CSP based on a Compensable Delay, the Change in Costs will be calculated in accordance with Section 24.3(c) (Procedure for grant of relief);
 - (ii) identify the impacts of the proposed Change to the Baseline CPM Schedule by attaching a Time Impact Analysis and Current CPM Schedule reflecting the proposed Change;
 - (iii) base the CSP on the Contractor's actual or expected construction productivity rates (and provide appropriate support for those productivity rates), not on published or trade association composite rates;
 - (iv) identify any prices or other elements of the CSP that are conditional, such as time-sensitive orders or events;
 - (v) certify the CSP as shown in the form set out in Part B (*Basis for establishing costs associated with a Change*) of Exhibit 16 (Principles for estimating and calculation of cost of Changes);
 - (vi) complete the Certificate of Current Cost or Pricing Data;
 - (vii) where the County notifies the Contractor that the CSP requires Board approval, include a Campaign Contribution Disclosure form;
 - (viii) identify whether the Contractor asserts that it requires relief from compliance or a revision to its other obligations under this Contract, resulting from the proposed Change;
 - (ix) identify any new Governmental Approvals or amendments to existing Governmental Approvals that will be required as a result of the proposed Changes under the Change Notice; and
 - (x) provide such documentation as is necessary to support its submittals under the CSP and any other supporting documentation as may be reasonably requested by the County.
- (c) If the Contractor fails to deliver a CSP in accordance with this Section 25.3, the County may direct the Change by issuing a Change Order in accordance with

Section 25.5 (Directed Change) at a value that the Contracting Officer determines is fair and reasonable.

25.4 **Review and evaluation of Cost and Schedule Proposal**

- (a) Upon the County's request, the Contractor must meet with the County to review, discuss, and negotiate in good faith any CSP delivered under this Article 25.
- (b) Following the County's receipt of a CSP prepared and submitted in accordance with this Article 25, the County may:
 - (i) accept the CSP (as may be modified following discussions in accordance with Section 25.4(a)) by entering into a bilateral Modification with the Contractor;
 - (ii) Notify the Contractor that the County withdraws the Change Notice; or
 - (iii) direct the Change by issuing a Change Order in accordance with Section 25.5 (Directed Change) at a value that the Contracting Officer determines is fair and reasonable.
- (c) Any bilateral Modification executed by both Parties under this Contract shall:
 - (i) describe the Changes agreed under the Modification;
 - (ii) include any and all Changes to the Baseline CPM Schedule, Contract Time, and the Contract Price for the applicable Phase, payment terms, and any other costs of any nature arising out of the Changes agreed under the Modification; and
 - (iii) contain a statement that the adjustment to the Baseline CPM Schedule, Contract Time, and the Contract Price for the applicable Phase, if any, includes all time and amounts to which the Contractor is entitled as a result of the Changes included in the Modification.

25.5 **Directed Change**

- (a) The Contracting Officer may unilaterally direct a Change within the general scope of this Contract without notice to Sureties, and may in its discretion direct immediate performance of the Contractor's obligations in accordance with a Change, by issuing a Change Order.
- (b) The County may issue a Change Notice or continue discussion, negotiation, and agreement of a CSP under Section 25.4(a) (*Review and evaluation of Cost and Schedule Proposal*), delivered in response to a Change Notice, notwithstanding issuance of a Change Order.
- (c) If a bilateral Modification is subsequently agreed upon with respect to a Change under a Change Order, the terms of the bilateral Modification shall prevail over the

terms of the Change Order. If no bilateral Modification is agreed upon, the terms of the Change Order and this Section 25.5 shall continue to apply.

- (d) Unless the Parties agree to a bilateral Modification with respect to the Contractor's obligations under the Change Order or a bilateral Modification is determined otherwise under any Claim or Dispute with respect to the Contractor's obligations under the Change Order in accordance with Article 37 (Claim and Dispute Resolution):
 - (i) the Contractor shall maintain its records in accordance with Part B (*Basis for establishing costs associated with a Change*) of Exhibit 16 (Principles for estimating and calculation of cost of Changes), including maintaining contemporary records as necessary to distinguish the costs incurred with respect to any Change Order, from the cost of all other Work;
 - (ii) the Contractor shall submit reports of Work performed under any Change Order in any progress reports required under this Contract and in contemporary records certified by the signature of the Contractor Representative; and
 - (iii) the Contractor shall make all back-up records, reports, and submittals relating to the Work performed under any Change Order immediately available to the County upon request for Audit in accordance with Section 32.2 (Audits).
- (e) A Change Order issued by the County may contain a not to exceed amount or a lump sum price to set the maximum limit that may be expended by the Contractor under the Change Order. The Contractor shall issue a Notice to the County when 80% of the maximum limit under a Change Order has been expended on the Contractor's obligations under that Change Order, including an estimate of the cost to complete the Contractor's obligations under the Change Order.
- (f) Under no circumstance will the County be liable for or pay any amount for the Contractor's obligations under a Change Order in excess of the applicable maximum limit set out under that Change Order unless:
 - (i) a bilateral Modification modifying the maximum limit, is agreed upon with respect to the Contractor's obligations under that Change Order;
 - (ii) a new maximum limit is issued unilaterally by the County with respect to the Contractor's obligations under that Change Order; or
 - (iii) a new maximum limit with respect to the Contractor's obligations under that Change Order is determined under any Claim or Dispute with respect to the Contractor's obligations under that Change Order in accordance with Article 37 (Claim and Dispute Resolution).

- (iv) To the extent a Change Order is issued with respect to a Compensable Delay, Section 24.3(c) (Procedure for grant of relief) shall apply.

25.6 Implementation of a Change

- (a) The Contractor must not commence performance of any obligations under a Change described in a Change Notice or otherwise implement a Change proposed under a Change Notice unless and until:
 - (i) the Parties have agreed to a bilateral Modification with respect to that Change; or
 - (ii) the County has directed the Change by issuing a Change Order.
- (b) The execution of a bilateral Modification by the Parties shall be deemed to be an unconditional agreement to all Changes to the Work, and all other adjustments to this Contract including any and all adjustments to the Baseline CPM Schedule, Contract Time, and Contract Price for the applicable Phase, described under that Modification. There will be no reservation of rights with respect to further adjustments to the Contract Price or Contract Time arising from the Change under a bilateral Modification.
- (c) Upon execution of a bilateral Modification or a Change Order, the Contractor shall promptly proceed to perform its obligations under, and to implement, the Changes described in that bilateral Modification or Change Order.

25.7 Work after Scheduled Completion Date or Delay

To avoid any duplicate payment of overhead or profit, if the Contractor performs any Work under a Modification after the Scheduled Completion Date, or during a Compensable Delay, the mark ups for overhead and profit included in a Modification under this Article 25 and Exhibit 16 (Principles for estimating and calculation of cost of Changes) for that period shall be deducted from any extended overhead or profit that may be otherwise payable to the Contractor under this Contract for the Compensable Delay.

25.8 Deleted Work

If a Modification deletes Work from:

- (a) the Phase 1 Work; or
- (b) the Phase 2 Work following execution of a Phase 2 Supplement (or, in the case of an Early Works Package, following execution of an applicable Modification),

the amount of the reduction in the Contract Price for the applicable Phase (or Early Works Package) shall be based upon an estimate of the reasonable cost the Contractor would have incurred had the deleted part of the Work been performed, calculated in accordance with Part B (*Basis for establishing costs associated with a Change*) of Exhibit 16 (Principles for estimating and calculation of cost of Changes), and taking into account any

reduction in risk but allowing for recovery of documented cancellation and restocking charges.

25.9 Request for Change

- (a) If the Contractor determines that:
- (i) a direction from the County to the Contractor under this Contract or a Differing Site Condition constitutes or involves a Change;
 - (ii) an Excusable Delay occurs that requires an extension of time, relief from performance or, in the case of a Compensable Delay, additional costs; or
 - (iii) any other condition is discovered or an event occurs that constitutes or involves a Change,

for which no Change Notice or Change Order has been issued by the County, the Contractor must submit a Request for Change to the County within 30 Days of the direction from the County or becoming aware of the occurrence or event (or when the Contractor should have become aware of the occurrence or event in the exercise of reasonable prudence).

- (b) No separate Request for Change shall be submitted for any Change proposed during Phase 1 that is incorporated in, and taken account under, the Phase 2 Proposal (or any earlier Early Works Package Proposal) under Article 2 (Term and Phased Work). The Contractor shall only submit a Request for Change with respect to a requested Change to the Phase 1 Work or to the Phase 2 Work after execution of a Phase 2 Supplement (or to an Early Works Package after execution of a Modification for that Early Works Package).
- (c) Each Request for Change submitted under this Section 25.9 must:
- (i) be clearly marked "Request for Change";
 - (ii) set out that the Contractor considers a direction, occurrence, or event, a Change;
 - (iii) include the date and a detailed description of the relevant direction, occurrence, or event underlying the Request for Change;
 - (iv) include a detailed description of the reason why the Contractor considers the direction, occurrence, or event, a Change, and in the case of a Request for Change based on an Excusable Delay, include the reason for asserting an Excusable Delay and, if applicable, a Compensable Delay;
 - (v) identify the requested Change, including specific reference to the relevant Sections, Articles, and Exhibits of this Contract and:

- (A) in the case of a Request for Change based on an Excusable Delay identify:
 - (aa) any extensions to the Contract Time or to the designated dates set out in the Work Completion Schedule for the applicable Phase requested under the Change, including a calculation of the number of Days of Delay requested under the Change (both on an unmitigated and mitigated basis);
 - (bb) any Delay Compensation claimed in the case of a Compensable Delay (both on an unmitigated and mitigated basis); and
 - (cc) any Mitigation Costs claimed in the case of a Compensable Delay, calculated with respect to those mitigation actions for the Compensable Delay set out under the Contractor's proposed mitigation action plan submitted together with the Request for Change in accordance with Section 17.5 (Notice of Delays) and Section 17.6 (Mitigation action plan for Delay); and
- (B) in the case of a Request for Change based on a Differing Site Condition, any other increase or decrease in costs calculated with respect to any Change in the Work caused by the Differing Site Condition and not part of a Claim for any Delay Compensation or Mitigation Costs (if applicable) or a Change Notice or Change Order issued by the County;
- (vi) identify the impacts of the requested Change to the Baseline CPM Schedule by attaching a Time Impact Analysis and Current CPM Schedule reflecting the requested Change (both on an unmitigated and mitigated basis);
- (vii) identify the name, title, and activity of each of the County Authorized Representatives knowledgeable of the facts underlying the Request for Change;
- (viii) if the Request for Change is based (in whole or in part) on a Passthrough RFC, include a summary of the Contractor's analysis of all components of the Passthrough RFC and the following sworn certification, signed by the Contractor Representative:

"I certify that this Request for Change, based in whole or in part on a Subcontractor's change request, is made in good faith; has been duly investigated, is not falsely represented, and I have determined it is justified as to entitlement and amount of time and/or money requested, and that all supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable; and that I am duly authorized to make this certification on behalf of the Contractor."; and

- (ix) include such documentation as is necessary to support the Request for Change and any other supporting documentation as may be reasonably requested by the County.
- (d) If a Request for Change involves:
 - (i) an Excusable Delay, the Contractor must:
 - (A) promptly provide initial Notice of Delay in accordance with Section 17.5 (Notice of Delays); and
 - (B) comply with its obligations under Article 24 (Delay Events); and
 - (ii) an event or occurrence related to Article 7 (Worksite), the Contractor must:
 - (A) provide Notice of the event or occurrence in accordance with Article 7 (Worksite); and
 - (B) afford the County the opportunity to inspect such event or occurrence before it is disturbed.
- (e) Prior to submittal by the Contractor of any Request for Change which is based in whole or in part on a request by a Subcontractor (to the Contractor) for a price increase or time extension under its Subcontract (a "**Passthrough RFC**"), the Contractor shall have reviewed all claims by the Subcontractor which constitute the basis for the Passthrough RFC and determined in good faith that each such claim is justified under this Contract and that the Contractor is justified in submitting a Request for Change on the basis of that Passthrough RFC.
- (f) If the Contractor fails to deliver a Request for Change in accordance with the requirements and time period set out under this Section 25.9 and before commencing work on the subject matter of the direction, occurrence, or event, it shall be deemed to have accepted and agreed that the direction, occurrence, or event does not constitute or involve a Change and the Contractor shall not have, and will be deemed to have waived, any Claim to any extension of time, additional compensation, or other relief under the terms of this Contract arising out of the direction, occurrence, or event.
- (g) If the Contractor issues a Request for Change, the County may:
 - (i) accept that the direction, occurrence, or event constitutes a Change and issue a Change Notice or Change Order, or, if it determines that sufficient information has been provided under the Request for Change, may proceed directly to agreeing on and executing a bilateral Modification under Section 25.4(a) (Review and evaluation of Cost and Schedule Proposal);
 - (ii) reject the Request for Change by issuing a Notice to the Contractor, in which case the Contractor must, unless otherwise directed by the Contracting Officer or determined under Article 37 (Claim and Dispute resolution),

comply with the direction or continue to perform the Work notwithstanding the event or occurrence; or

- (iii) in the case of a Request for Change based on a direction, withdraw the direction by Notice.
- (h) If within 30 Days after receipt of a Request for Change, the County has not issued a Notice or taken any other action under Section 25.9(g), the County will be deemed to have rejected the Request for Change.
- (i) Notwithstanding anything that could be interpreted to the contrary in this Section 25.9, a Request for Change shall be at the Contractor's risk. The Contractor shall not be relieved from performing the Work during the time that the County considers the Request for Change, and unless otherwise determined under Article 37 (Claim and Dispute resolution), will not receive any extension of time, additional compensation, or other relief under the terms of this Contract arising out of the applicable direction, occurrence, or event if the County rejects the Request for Change.

25.10 **Performance**

The Contractor shall proceed diligently with performance of this Contract during the submittal, consideration, evaluation, or negotiation of any Modification or Request for Change in accordance with this Article 25, except for any performance the Contracting Officer determines by Notice should be delayed, suspended, or terminated as a result of the negotiation of the Modification or Request for Change.

25.11 **Interest**

Except as provided under Applicable Law, no interest shall be payable on any amounts due under a Modification until 30 Days after the later of:

- (a) the execution of the Modification by the County; or
- (b) the amounts become due and payable under the terms of the Modification.

26. **CONTRACTOR CHANGES**

26.1 **Contractor Initiated Change Proposal**

The Contractor may propose a Change to the Phase 1 Work or to the Phase 2 Work after execution of a Phase 2 Supplement (or to an Early Works Package after execution of a Modification for that Early Works Package) for which no Request for Change is permitted but that offers value or benefit to the County (whether in terms of time, cost, quality, or performance) without impairing the essential functions or characteristics of the Project, including service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards (a "**Contractor Change**") by delivering a Notice to the County setting out the following (a "**Contractor Initiated Change Proposal**"):

- (a) the proposed Contractor Change in sufficient detail to enable the County to evaluate it in full;
- (b) the Contractor's reasons for proposing the Contractor Change including, in the case of a Contractor Change proposed to the Phase 2 Work, the reason for the proposed Contractor Change only being identified after execution of the Phase 2 Supplement;
- (c) the time within, and the manner in which, the Contractor proposes to implement the proposed Contractor Change;
- (d) a request to the County to consult with the Contractor with a view to deciding whether to agree to the proposed Contractor Change;
- (e) any impacts of the proposed Contractor Change to the Work and Baseline CPM Schedule;
- (f) details regarding proposed changes to the Contract Price for the applicable Phase, if any (and, if so, a detailed cost estimate of such proposed changes);
- (g) any dates by which a decision by the County is critical; and
- (h) all other information referred to in Section 25.3 (Cost and Schedule Proposal).

26.2 **Review and Evaluation of Contractor Initiated Change Proposal**

- (a) The County shall evaluate each Contractor Initiated Change Proposal, taking into account all relevant issues, including:
 - (i) the impact to the Contract Price, Contract Time, and the Baseline CPM Schedule for the applicable Phase;
 - (ii) the impact to the quality of the Work, performance of the Project, and the likelihood of successful delivery of the Work;
 - (iii) any failure by the Contractor to propose such Change during the preparation of the Phase 2 Proposal (or any Early Works Package Proposal);
 - (iv) the impact to any third parties; and
 - (v) the impact on the risk or costs to which the County is exposed.
- (b) Promptly (and in any event within 30 Days) after receiving a Contractor Initiated Change Proposal, the Parties shall meet to discuss the matters referred to in it. During such discussions, the County and the Contractor may propose modifications to the Contractor Initiated Change Proposal.
- (c) Within 45 Days (or such longer period as may be required to obtain any Board or other internal approvals or any Third Party approvals) after receipt of a Contractor Initiated Change Proposal, the County shall, in its sole discretion, either:

- (i) accept the Contractor Initiated Change Proposal, in which case the Parties will execute a bilateral Modification in accordance with Section 25.4(a) (Review and evaluation of Cost and Schedule Proposal); or
 - (ii) reject the Contractor Initiated Change Proposal.
- (d) A Contractor Initiated Change Proposal will be deemed rejected unless the County expressly accepts the Contractor Initiated Change Proposal and executes a bilateral Modification.
- (e) If the County rejects the Contractor Initiated Change Proposal, it will not be obliged to give its reasons for such a rejection.
- (f) All Contractor Initiated Change Proposals (whether accepted or rejected) will become the property of the County and shall contain no restrictions imposed by the Contractor on its use or disclosure. The County retains the right to use, duplicate, and disclose in whole or in part any data necessary for the utilization of the Contractor Initiated Change Proposal on any other or subsequent projects without any obligation to the Contractor. This provision is not intended to deny rights provided by Applicable Law with respect to patented materials or processes.
- (g) Notwithstanding anything that could be interpreted to the contrary in this Section 26.2, a Contractor Initiated Change Proposal shall be at the Contractor's risk. The Contractor shall not be relieved from performing the Work during the time that the County considers the Contractor Initiated Change Proposal and unless otherwise determined under Article 37 (Claim and Dispute resolution) will not receive any extension of time, additional compensation, or other relief under the terms of this Contract arising out of the applicable direction, occurrence, or event if the County rejects the Contractor Initiated Change Proposal.

26.3 Decreased Costs

If a Contractor Initiated Change Proposal results in a decrease in the Contractor's costs, the Contract Price for the applicable Phase under this Contract will be adjusted downwards in accordance with Part B (*Basis for establishing costs associated with a Change*) of Exhibit 16 (Principles for estimating and calculation of cost of Changes) so that the benefit of such decrease in costs is shared 50:50 by the County and the Contractor.

PART H – INDEMNITIES AND INSURANCE

27. INDEMNITY FROM THE CONTRACTOR

27.1 Indemnity

(a) Indemnification for Design Work

- (i) The Contractor agrees that, because the Project Requirements and any Reference Materials are preliminary and conceptual in nature and are

subject to review and modification by the Contractor, such documents shall not be deemed "design furnished" by the County or any of the other Indemnified Parties, as the term "design furnished" is used in California Civil Code Section 2782. The Contractor hereby waives the benefit (if any) of California Civil Code Section 2782 and agrees that this Section 27.1 constitutes an agreement governed by California Civil Code section 2782.5.

- (ii) Subject to Section 27.4, to the fullest extent permitted by Applicable Law, the Contractor shall release, defend, indemnify, and hold harmless the Indemnified Parties on demand from and against any and all Losses, arising out of, relating to, or resulting from the negligence, recklessness, or willful misconduct of the Contractor in connection with or relating to, or claimed to be in connection with or relating to, any design professional work under the Work or this Contract, including but not limited to any liability arising out of, in connection with, resulting from, or related to:
 - (A) personal injury to or death of any person (including employees of the Indemnified Parties) or for damage to or loss of use of property (including property of the County);
 - (B) errors, omissions, inconsistencies, or other defects in the AFC Design Documents furnished by the Contractor, regardless of whether such errors, omissions, inconsistencies, or defects were also included in the Project Requirements or any Reference Materials; and
 - (C) the County's reliance upon the use in accordance with this Contract of any Contractor-Furnished Document or other data or information furnished or delivered by the Contractor pursuant to the Contract.

(b) **Indemnification**

Subject to Section 27.4 (Exclusions from indemnity), to the fullest extent permitted by Applicable Law, the Contractor shall release, defend, indemnify, and hold harmless the Indemnified Parties on demand from and against any and all third-party claims and liability for Losses incurred by an Indemnified Party arising out of, in connection with, resulting from, or related to, any act, omission, fault, or negligence of the Contractor or any other Contractor-Related Entity in connection with or relating to, or claimed to be in connection with or relating to, the Work or this Contract, including any and all liability for:

- (i) Losses with respect to:
 - (A) damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property belonging to an Indemnified Party; or

- (B) any Claim against the Indemnified Party (including by another Indemnified Party):
 - (aa) with respect to any illness of, personal injury to, or death of, any person;
 - (bb) with respect to damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property, or Construction Equipment; or
 - (cc) with respect to Intellectual Property;
- (ii) present and future Environmental Impairment Losses;
- (iii) Losses arising out of, or as a consequence of:
 - (A) Contractor-Generated Hazardous Substances;
 - (B) failure to comply with its obligations under Section 7.4 (Waste and Hazardous Substances);
 - (C) remedial work required under any Environmental Law;
 - (D) an Indemnified Party's reliance upon the use in accordance with this Contract, of any Contractor-Furnished Document or other data or information furnished or delivered by the Contractor pursuant to this Contract.

27.2 Investigation of potential negligence

- (a) If the Contractor incurs costs to investigate any allegation by the County of the Contractor's negligence in its performance of this Contract, the County will reimburse the Contractor for its reasonable costs only if:
 - (i) the County agrees that the Contractor was not negligent in its performance of this Contract; or
 - (ii) it is found, pursuant to the Dispute resolution process under Article 37 (Claim and Dispute resolution), that the Contractor was not negligent and such costs are determined in that process.
- (b) If the Contractor is found under the Dispute resolution process to have been negligent, the Contractor shall pay the County's reasonable costs, as determined in the Dispute resolution process, to investigate and pursue its claim.

27.3 Employee claims

Claims against any Indemnified Party, the Contractor, or a Contractor-Related Entity by any employee of the Contractor or any Contractor-Related Entity, including claims under

any workers' compensation act, disability benefit act, or other employee benefit act or insurance, shall not in any way limit the Contractor's liabilities to the Indemnified Parties.

27.4 Exclusions from indemnity

In addition to limitations of liability under Section 40.17 (Indirect Loss), the following limitations and exclusions shall apply to the indemnities given by the Contractor under this Contract:

- (a) with respect to any Losses of the type covered by any Required Insurance, the Contractor's indemnity obligation shall not extend to any Loss arising from the sole negligence or willful misconduct of the Indemnified Parties;
- (b) with respect to any Losses which are not of the type covered by any Required Insurance, the Contractor's indemnity obligation shall not extend to any Losses to the extent that such Losses were caused by the negligence or willful misconduct of the Indemnified Parties (in other words, a comparative negligence standard shall apply);
- (c) the Contractor shall not indemnify the County or other Indemnified Parties for Hazardous Substances discovered on the Worksite that are not Contractor-Generated Hazardous Substances; however, the Contractor shall be liable for and indemnify the County and other Indemnified Parties from any Losses arising from Contractor-Generated Hazardous Substances;
- (d) the Contractor shall not indemnify the County or other Indemnified Parties for use of any Contractor-Furnished Document or other information furnished or delivered by the Contractor pursuant to this Contract: (i) for any purpose not related to the Project or the Work including the design, construction, modification, operation, maintenance, or procurement of the Project or the Work (or any part of it); or (ii) where the County or the Indemnified Party has materially altered such Contractor-Furnished Document or other information or data without the involvement of the Contractor;
- (e) except as permitted by California Civil Code Sections 2782.1, 2782.2, and 2782.5, such indemnities shall not inure to the benefit of an Indemnified Party so as to impose liability on the Contractor for the active negligence of the Indemnified Parties or to relieve the Indemnified Parties of liability for such active negligence; and
- (f) the Contractor shall not indemnify the County or other Indemnified Parties under Section 27.1(a) (Indemnification for Design Work) with respect to any signed and sealed plans and specifications furnished by the County.

27.5 Notice of third party claims

In accordance with Public Contract Code Section 9201, each Party agrees to notify the other promptly upon receipt of any third-party claim for which a Party is entitled to indemnity under the Contract.

27.6 Survival and other rights and remedies

- (a) The indemnities specified in this Article 27 and otherwise given under this Contract shall survive termination or close-out of this Contract, and are in addition to and do not limit any other rights or remedies that the Indemnified Parties may have under the Applicable Law or this Contract.
- (b) In the event of any claim or demand made against any Indemnified Party, the County may at its sole discretion reserve, retain, or apply any monies due to the Contractor under this Contract for the purpose of resolving such claims; provided, however, the County will release such funds if the Contractor gives the County reasonable assurance that the County's interests will be protected, including the acceptance of tender of any such claim or demand. The County shall, at its sole discretion, determine whether such assurance is reasonable.

28. INSURANCE REQUIREMENTS

28.1 Contractor-controlled insurance program

- (a) **Contractor-provided insurance**
 - (i) The Contractor shall obtain and maintain, or cause to be obtained or maintained (if applicable), each of the insurance policies with the insurance coverages, for the periods of cover and for the benefit of the named and additional insureds, identified in Exhibit 7 (Required Insurance) in accordance with the requirements set out in this 28 and Exhibit 7 (Required Insurance) (the "**Required Insurances**").
 - (ii) All limits of liability set out in Exhibit 7 (Required Insurance) are in U.S. dollars and are specifically reserved for the Project.
 - (iii) If the Contractor is performing Work beyond the expiration of the required period of cover set out in Exhibit 7 (Required Insurance), the County may by Notice require that the Contractor obtain and maintain supplemental insurance requirements for the remaining Work to be performed that may have lower required limits, depending on the type of Work being performed. Unless otherwise permitted under a Modification, including a Modification authorized pursuant to a Compensable Delay, no allowance or reimbursement to the Contractor for such supplemental insurance will be made.

- (iv) Limits of insurance in excess of the requirements under this Contract may be obtained at the discretion of the Contractor.

(b) **Subcontractor Insurance**

- (i) The Contractor must ensure that any and all Subcontractors performing any part of the Work are appropriately insured with the insurance coverages as follows (the "**Subcontractor Insurances**"):
 - (A) in the case of Subcontractors performing any part of the Phase 1 Work or any Early Works Package not involving the commencement of physical Construction Work, the Contractor must ensure that any and all Subcontractors performing any part of the Work are appropriately insured with the insurance coverages and for the periods of cover applicable to the scope of Work to be performed by the Subcontractor in accordance with Good Industry Practice; and
 - (B) in the case of Subcontractors performing any part of the Phase 2 Work including any Early Works Package involving the commencement of physical Construction Work (but excluding any other Early Works Packages), the Contractor shall ensure that each Subcontractor performing the Work is insured on the same terms as the Contractor itself under this Article 28 and in accordance with Exhibit 7 (Required Insurance).
- (ii) The Contractor may, by Notice to the County, request any variations to the Subcontractor Insurances under Section 28.1(b)(i)(B). The County may approve or reject any such request in its sole discretion, by return Notice to the Contractor. If the County fails to respond to such request, the request shall be deemed rejected.
- (iii) The Contractor shall keep and maintain certified copies of all Subcontractor Insurance documents and provide verification of such Subcontractor Insurance upon the County's request in accordance with Section 28.1(h)(i)(D) (Verification of Cover).

(c) **Additional insureds**

The County and each other Indemnified Party shall be an additional insured or named insured under the Required Insurances to the extent set out in Exhibit 7 (Required Insurance).

(d) **Primary and Non-contributory**

The Required Insurances shall be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

(e) **Severability of interests**

The Required Insurances shall be applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

(f) **County acceptance**

The County shall have the right to accept or reject all of the Required Insurances obtained under this Article 28 including, but not limited to their terms, conditions, sub-limits, and exclusions (such acceptance not to be unreasonably withheld or delayed).

(g) **Eligible insurers**

All Required Insurances shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VII or better, or as otherwise accepted by the County, and authorized or approved to do business in the State. Non-admitted carriers are acceptable.

(h) **Verification of cover**

- (i) The Contractor shall deliver to the County:
- (A) concurrently with the Contractor's execution of this Contract or on such later date on which coverage is required to be provided under this Contract and in any case prior to issuance of the Notice to Proceed for the relevant part of the Work, a certificate of insurance with respect to each Required Insurance;
 - (B) no later than 10 Days prior to the expiration date of a Required Insurance being renewed, a certificate of insurance with respect to the renewal of that Required Insurance;
 - (C) promptly and in any event within 90 Days after the effective date (or renewal date) of each Required Insurance, a true and complete certified copy of the binders and policy forms (including renewal policy forms) for that Required Insurance bearing a notation or accompanied by supporting documentation, evidencing payment of the applicable premium in full; and
 - (D) if requested by the County from time to time, certified duplicate copies of any insurance certificate or policy forms for a Required Insurance.

- (ii) Each insurance certificate provided by the Contractor to the County under this Section 28.1(h) must:
 - (A) state the identity of all insurers, named insureds, and additional insureds, and state the type and limits/sub-limits of coverage and the deductibles/ self-insured retentions;
 - (B) where applicable, include as attachments all additional insured and amendatory endorsements (or copies of the applicable policy language affecting the required coverage);
 - (C) be either personally and manually signed by the authorized representative of the insurance company shown on the certificate with proof that he/she is an authorized representative of that insurance company and is authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown on the certificate or signed by electronic signature in accordance with the most recent industry standard electronic versions of the ACORD certificate; and
 - (D) evidence that the insurance has been procured in accordance with the requirements of this Contract.

(i) **Contractor's or Subcontractor's failure to obtain and maintain any Required Insurance or Subcontractor Insurance**

If the Contractor or any Subcontractor fails to obtain and maintain any Required Insurance or Subcontractor Insurance respectively, fails to deliver the proof of coverage required under Section 28.1(h) (*Verification of cover*), in each case for a Phase or other part of the Work:

- (i) if, on account of the Contractor's or Subcontractor's failure, the County or any other Indemnified Party is adjudged to be a co-insurer or otherwise held responsible for all or any portion of a judgment, loss, or settlement (through admission or stipulation by the Contractor or court decision) that would have been covered by insurance but for the Contractor's or Subcontractor's failure to obtain or maintain the Required Insurance or Subcontractor Insurance respectively, then any loss or damage it shall sustain by reason of that non-compliance shall be borne by the Contractor, and the Contractor shall immediately pay the same to the County, upon receipt of written demand and evidence of such loss or damage;
- (ii) the County shall have no duty to pay or perform under this Contract with respect to that Phase or other applicable part of the Work;
- (iii) the County may, without obligation or liability, suspend all or any part of that Work;

- (iv) the County may obtain equivalent insurance to the Required Insurance or Subcontractor Insurance with the cost of associated premiums to be promptly reimbursed by the Contractor or withheld by the County from payments otherwise due to the Contractor under this Contract pursuant to Section 23.3(d) (Additional deductions and set-off); and
- (v) terminate this Contract in accordance with Article 30 (Termination for Contractor Default), and obtain the remedies provided for under that Article,

provided in each case that nothing in this Article 28 shall preclude the County from exercising any of its other rights and remedies under this Contract or Applicable Law, as a result of the failure of the Contractor to comply with its obligations under this Article 28.

(j) **Changes in requirements**

- (i) During Phase 1 and prior to submittal of the Phase 2 Proposal, the Parties may agree to, or the County may Notify the Contractor of, adjustments to the Required Insurances. Any such adjustments agreed to by the Parties or Notified by the County shall be taken into account by the Contractor in preparing its Phase 2 Proposal (and any relevant Early Works Package Proposal) and will be incorporated in any Phase 2 Supplement or any other Modification under this Contract.

- (ii) Any changes to:

- (A) the Required Insurances applicable to the Phase 1 Work; or

- (B) after the execution of a Phase 2 Supplement or a Modification for an Early Works Package, the Required Insurances applicable to the Phase 2 Work (or that Early Works Package),

shall be made in accordance with Article 25 (County Changes) or Article 26 (Contractor Changes).

28.2 Premiums, deductibles, and self-insured retentions

(a) **Premiums**

- (i) The Contractor shall be responsible for payment of premiums for all Required Insurances.
- (ii) The cost of the Required Insurances applicable to the Phase 2 Work shall not be part of the Contract Price unless and until a Phase 2 Supplement has been executed, except to the extent agreed under a Modification for an Early Works Package.
- (iii) Neither the County nor any other Indemnified Party shall have any obligation to pay any premium and there shall be no recourse against the County or

any other Indemnified Parties for payment of premiums or other amounts with respect to Required Insurances.

(b) **Deductibles**

- (i) The selection of an appropriate deductible is the Contractor's responsibility. The Contractor further agrees that for each claim, suit, or action made against insurance provided under this Contract, the Contractor shall be solely responsible for all deductibles, self-insured retentions, and amounts in excess of the coverage provided for all insured parties, including the Contractor, Contractor-Related Entities, the County, and the other Indemnified Parties except to the extent the County is required to indemnify Contractor for such amounts in Article 27 (Indemnity from the Contractor).
- (ii) Any deductibles or self-insured retentions over \$10,000 must be declared and accepted by the County. The policy language regarding any self-insured retention shall provide or be endorsed to provide that the self-insured retention may be satisfied either by the Contractor or the County, or the Contractor shall procure a bond acceptable to the County guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

28.3 Endorsements and waivers

Each Required Insurance must contain or be endorsed to comply with the following provisions:

- (a) for claims covered by Required Insurances, the insurance coverage shall be primary insurance with respect to the named insureds, additional insureds, and their respective members, directors, officers, employees, agents, and consultants, and shall specify that coverage continues notwithstanding the fact that the Contractor has left the Worksite. Any insurance or self-insurance beyond the Required Insurances that is maintained by an insured, additional insured, or their members, directors, officers, employees, agents, and consultants shall be excess of such insurance and shall not contribute with it. This provision (a) shall not apply to the workers' compensation policy;
- (b) any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured, any foreclosure relating to the Project, or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other insureds or additional insureds (and their respective members, directors, officers, employees, agents, and consultants). This provision (b) shall not apply to the workers' compensation policy;
- (c) the insurance shall apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the

insurer's liability. This provision (c) shall not apply to the workers' compensation policy;

- (d) each policy shall be endorsed to state that coverage shall not be suspended, voided, cancelled, modified, or reduced in coverage or in limits except after 30 Days prior written notice by certified mail, return receipt requested, has been given to the County. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice;
- (e) all endorsements adding named insureds or additional insureds to any commercial general liability policy shall be on form CG 20 10 (2004 edition) and CG 20 37, or equivalent forms providing named insureds and additional insureds with coverage for "completed operations". This provision (e) shall not apply to the workers' compensation policy;
- (f) each policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability and environmental liability or contractor's pollution policies) and no policy issued on an occurrence basis shall have any sunset clause requiring reporting within a specified period of time; and
- (g) the insurance policy(ies) shall be endorsed to cover terrorism risks under the Terrorism Risk Insurance Act of 2002 (as amended). This provision (h) shall apply only to the builder's risk, commercial general liability, and excess/umbrella policies.

28.4 **Waivers of subrogation**

- (a) The Contractor shall require the carriers of Required Insurances to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or automobile liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.
- (b) The Contractor shall require all Subcontractors to provide similar waivers to that set out in Section 28.4(a) in writing each in favor of all other parties referenced in Section 28.4(a). Each Required Insurance, excluding the professional liability, but including workers' compensation, shall include a waiver of any right of subrogation against all insured and additional insureds (and their respective members, directors, officers, employees, agents, and consultants).

28.5 **Governmental immunity**

Any Sureties providing a Required Insurance shall waive their rights to assert the immunity of the State as a defense to any claims arising out of this Contract.

28.6 Support of indemnifications

- (a) The Required Insurances obtained and maintained by the Contractor shall support but shall not limit the Contractor's indemnification obligations under this Contract, nor do the indemnity obligations limit the rights of the insured parties to the coverage afforded by their insured status.
- (b) If the Contractor's payment of the deductibles or its provision of the Required Insurances is held by a court of competent jurisdiction to be invalid, void, or unenforceable, under California Civil Code Sections 2782 et seq., then, such obligations shall be deemed to exclude the invalid, void, or unenforceable part, and such obligations shall remain in effect with the exclusion of the part that is invalid, void, or unenforceable.
- (c) The required limits contained within this Contract are considered the minimum amount. Any limits maintained by the Contractor or Subcontractors that are in excess of these requirements shall be made available to the County.

28.7 Processing claims

- (a) Unless otherwise directed by the County by Notice, the Contractor shall be responsible for timely reporting and promptly and diligently pursuing and processing any and all potential claims on behalf of the County or any other Indemnified Party or the Contractor against any Required Insurance, whether for defense or indemnity or both.
- (b) The County agrees to promptly Notify Contractor of the County's incidents, potential claims, and matters which may give rise to an insurance claim by the County, to tender its defense or the claim to the Contractor, and to cooperate with the Contractor as necessary for the Contractor to fulfill its duties under this Section 28.7.

28.8 Disclaimer

- (a) The Contractor and each Subcontractor are responsible for ensuring that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified as a Required Insurance or Subcontractor Insurance under this Contract.
- (b) The County makes no representation or warranty that the coverage, limits of liability, or other terms specified for the Required Insurances are adequate to protect Contractor against its undertakings under this Contract or its liability to any third party or preclude the County from taking any actions as are available to it under this Contract or otherwise under Applicable Law.
- (c) The County shall not be limited to the amount of the insurance premium not paid in the proof of any damages it may claim against the Contractor arising out of or by reason of failure of the Contractor to provide and keep in force the Required

Insurances, but the County shall instead be entitled to recover the full amount of damages available.

- (d) Nothing contained in this Article 28 shall relieve the Contractor or any Subcontractors of its obligation to exercise due care in the performance of the Work and to complete the Work in strict compliance with this Contract.

PART I – TERMINATION

29. TERMINATION FOR CONVENIENCE

29.1 County's right to terminate for convenience

- (a) The County may in its sole discretion terminate the Contractor's performance of the Work under this Contract, in whole or in part, without cause, at any time, by delivery of a Notice of Termination for convenience to the Contractor marked 'Termination for Convenience' and specifying the part of the Work that shall be terminated and the date upon which such termination shall become effective.
- (b) Upon receipt of a Notice of Termination for convenience under this Section 29.1, the Contractor shall comply with its obligations under Article 31 (Obligations on termination).
- (c) This Article 29 will not in any case apply in the case of a failure to agree to a Phase 2 Supplement.

29.2 Submittal and review of invoice

- (a) Within 60 Days of the County's delivery of a Notice of Termination for convenience under this Article 29, the Contractor shall submit an invoice based on the percentage of the Work completed prior to the Date of Termination and other allowable and allocable costs reasonably incurred by the Contractor to implement the termination as permitted in accordance with Section 29.3 (Termination Payment).
- (b) The County will review and the Contracting Officer shall approve the invoice, or approve the invoice as adjusted, based upon its determination of allowable and allocable costs to determine the amount properly due under Section 29.3 (Termination Payment), and will pay the Contractor the amount so approved or determined.
- (c) If the Contractor fails to submit an invoice within the time specified under this Section 29.2, the Contracting Officer will determine the amount properly due to the Contractor under Section 29.3 (Termination Payment), if any, on the basis of information available, and will pay the Contractor the amount determined, and unless excused in writing by the County in its sole discretion, the Contractor's failure to submit an invoice within the time required shall constitute acceptance that such payment shall constitute payment in full under Section 29.2(e).

- (d) Under such terms and conditions as it may prescribe in the Notice of Termination and at its sole discretion, the County may make partial payments against costs incurred by the Contractor in connection with the terminated portion of this Contract whenever the Contracting Officer decides that the aggregate of such payments is within the amount to which the Contractor is entitled under this Article 29. If the total of such payments is in excess of the amount finally agreed-upon or determined to be due under this Article 29, such excess shall be payable by the Contractor to the County upon demand, together with interest at a rate equal to that set forth in California Code of Civil Procedure Section 685.010. This Contract will be modified accordingly and the Contractor will be paid the agreed-upon amount.
- (e) A payment made by the County under this Section 29.2 shall constitute payment in full for the Work performed under this Contract (or for the applicable part of the Work in the case of a partial termination).

29.3 Termination payment

Unless the Contractor and the Contracting Officer otherwise agree on an amount to be paid to the Contractor by the County by reason of the termination of Work under this Article 29, the County will pay Contractor the amounts determined by the Contracting Officer as follows, without double counting:

- (a) the Contract Price (or portion of it) allocable to the portion of the Work properly performed by the Contractor as of the Date of Termination, as determined in accordance with this Contract, reduced by any sums previously paid to the Contractor excluding the fair value (as determined by the Contracting Officer) of property that is destroyed, lost, stolen, or damaged (so as to become undeliverable to the County), except to the extent that the County will have otherwise expressly assumed the risk of loss under this Contract and in the case of a partial termination, reduced by any continuing Work that has not been terminated and for which payment has not yet become due under this Contract;
- (b) **plus** the cost of settling and paying claims arising out of the termination of the Work under Subcontracts in accordance with this Article 29 and Article 31 (Obligations on termination), exclusive of the amounts paid or payable on account of Work furnished by Subcontractors prior to the Date of Termination;
- (c) **plus** any other reasonable costs incidental to the termination of the Work under the Contract, including those reasonable expenses incurred to determine the amounts due and to perform the Contractor's obligations under Article 31 (Obligations on termination);
- (d) **less** the amount of any claim (including under the indemnities provided under this Contract) that the County may have against the Contractor in connection with the Contract; and

- (e) **less** the agreed upon price for and/or proceeds from the sale of Goods or other items acquired or sold by the Contractor that have not been otherwise recovered by or credited to the County.

30. **TERMINATION FOR CONTRACTOR DEFAULT**

30.1 **County's right to terminate for Contractor Default**

Subject to Section 30.2 (Cure Notice), the County may by delivery of a Notice of Termination for Contractor Default to the Contractor terminate this Contract, in whole or in part, for any of the following (each a "Contractor Default"):

- (a) the Contractor fails or refuses to perform any obligation under this Contract or violates any duty required of the Contractor under this Contract or otherwise breaches an obligation or requirement under this Contract, except to the extent such failure is excused by the County under the terms of this Contract;
- (b) the Contractor violates or fails to comply with an order or requirement of the Contracting Officer authorized by or within the scope of this Contract;
- (c) the Contractor fails to obtain or maintain the Required Insurances;
- (d) the Contractor abandons all or a material part of the Project, which abandonment will be deemed to have occurred if: (i) the Contractor demonstrates through statements, acts, or omissions an intent not to continue the Work; or (ii) no significant Work on the Project is performed for a continuous period of more than 30 days except as expressly authorized under this Contract or accounted for under the Baseline CPM Schedule;
- (e) the Contractor assigns this Contract, or any part of it, or subcontracts any Work except as expressly authorized under this Contract;
- (f) the Contractor's insolvency, bankruptcy, reorganization, or the filing of any related or similar proceeding; the appointment of a receiver or trustee for the Contractor; the execution by the Contractor of a general assignment for the benefit of creditors where the meaning of insolvency and bankruptcy shall be as defined in the United States Bankruptcy Code;
- (g) the Contractor fails to pay any amounts owing to any persons performing any portion of the Work, or fails to pay any amount due to the County under this Contract when due (except to the extent such payment is subject to a good faith Dispute) or otherwise fails to pay its debts incurred in connection with this Contract as they become due, providing that such failure continues for a period of 15 Days after the applicable due date;
- (h) the attachment, levy, execution, or other judicial seizure of any part of the Contractor's property, or any substantial portion of the other assets of the

Contractor, which is not released, expunged, or discharged within a period of 15 Days of judicial seizure;

- (i) the Contractor's violation or material failure to comply with any Applicable Law or order of a Government Entity applicable to the Contractor, the Work, or this Contract, including the submittal or pursuit of any false claim or any other act in violation of any Applicable Law relating to false claims;
- (j) the Contractor fails to indemnify any Indemnified Person as required under this Contract;
- (k) the Contractor fails to promptly remedy any Deficiency, or to re-perform or replace rejected Work that is Deficient;
- (l) the conviction of the Contractor or any of its officers, partners, principals, employees, or the Contractor Representative, for a violation of any Applicable Law related to the Contractor's obligations under this Contract, including, in connection with the Work to be performed, Goods supplied, payments to be made, or Claims submitted under this Contract;
- (m) the Contractor's fraudulent representation or other material misrepresentation or warranty under this Contract, including the filing of a false claim under the California False Claim Act (California Government Code Section 12650 et seq.) or the federal False Claim Acts;
- (n) the Contractor's offering or giving of any improper consideration, in any form, either directly or through an intermediary, to any County member, officer, employee, or Authorized Representative, with the intent of securing this Contract, any Modification to this Contract, or the making of any determinations with respect to the Contractor's performance of the Work; and
- (o) the Contractor's placement on the California State Labor Commissioner's list of debarred contractors pursuant to California Labor Code Section 1777.1.

30.2 **Cure Notice**

- (a) Subject to Section 30.2(d), if the County determines that a Contractor Default has occurred, the County may (and shall prior to exercising its rights under Section 30.2(c)) Notify the Contractor of the Contractor Default and issue a Cure Notice to the Contractor. If the County issues a Cure Notice to the Contractor, the County may send a copy of the Cure Notice to the Surety.
- (b) If the County determines that a Contractor Default has occurred, the County may through the applicable Cure Notice or another Notice, without prejudice to any other right or remedy available to it, require the Contractor to prepare and submit, within 15 Days of being notified (or such longer period as the County may determine), a remedial plan to cure the Contractor Default ("**Remedial Plan**"). Whether or not the County requires preparation of a Remedial Plan, the Contractor

may prepare and submit to the County a Remedial Plan within 15 Days of receipt of a Cure Notice. A Remedial Plan must set out specific actions and an associated schedule to be followed by the Contractor to cure the relevant Contractor Default and reduce the likelihood of such defaults occurring in the future. If the County Notifies the Contractor that its Remedial Plan is acceptable, the Contractor shall implement such Remedial Plan in accordance with its terms. If the County notifies the Contractor that its Remedial Plan is not acceptable, the County may require the Contractor to resubmit the relevant Remedial Plan.

- (c) If:
- (i) the Contractor fails to cure the applicable Contractor Default within 30 Days after receipt of a Cure Notice; or
 - (ii) where a Remedial Plan has been accepted by the County, the Contractor fails to comply with the Remedial Plan or cure the Contractor Default, in each case in accordance with the schedule provided in such Remedial Plan,

the County shall provide Notice to the Surety of the Contractor's failure to cure or commence a cure, attaching the applicable Cure Notice. At any time after the occurrence of a Contractor Default, the County may, in its sole discretion, exercise its rights under the Performance Bond. The County may, by a Notice of Termination, terminate this Contract or such part of this Contract as the County, in its sole discretion, determines to be in its best interest.

- (d) Notwithstanding the other terms of this Section 30.2, upon the occurrence of a Contractor Default under Section 30.1(f) (County's right to terminate for Contractor default), the County may immediately deliver a Notice of Termination for Contractor Default with no requirement to first deliver a Cure Notice.
- (e) Upon receipt of a Notice of Termination for Contractor Default under this Section 30.2, the Contractor shall comply with its obligations under Article 31 (Obligations on termination) and the Contractor will not be entitled to any further payments under this Contract, except for any amounts already due and payable in accordance with the terms of this Contract.

30.3 **If Contractor not in default**

If, after delivery of a Notice of Termination for Contractor Default, the Contractor Disputes the Contractor Default and it is determined that no Contractor Default had occurred, the termination shall be deemed to have been effected for the convenience of the County and Article 29 (Termination for convenience) shall apply.

31. OBLIGATIONS ON TERMINATION

31.1 Contractor obligations

The Contractor understands and agrees that the County has obligations that it cannot satisfy without use of the completed Work, and that a failure to satisfy its obligations under this Contract could result in irreparable damage to the County and the persons and entities it serves. Upon receipt of a Notice of Termination from the County, the Contractor shall:

- (a) unless otherwise agreed to or directed by the Contracting Officer under Section 31.1(f), stop any performance of that part of the Work that is terminated by the Notice of Termination on the Date of Termination;
- (b) place no further orders or Subcontracts for Goods or Work relating to that part of the Work that is terminated by the Notice of Termination;
- (c) communicate the Notice of Termination to the affected Subcontractors;
- (d) unless otherwise directed by the Contracting Officer under Section 31.1(e), terminate all orders and Subcontracts that relate to the performance of the part of the Work terminated by the Notice of Termination and settle outstanding liabilities and claims arising out of such termination of orders and Subcontracts, with the review and acceptance of the Contracting Officer if required;
- (e) upon the Contracting Officer's written order by Notice, assign to the County in the manner, at the times, and to the extent directed by the Contracting Officer, all of the rights, title, and interest of the Contractor in and to outstanding orders and Subcontracts affected by the termination;
- (f) fully cooperate with the County and use its Reasonable Efforts in accordance with Good Industry Practice in the transition of the Work to the County or to a new County Contractor including:
 - (i) within 10 Days of the written direction from Contracting Officer, developing and submitting to the County a termination transition plan ("**Termination Transition Plan**"), and upon the County's review and acceptance (if any) of the Termination Transition Plan, performing the transition activities under, and otherwise complying with, the Termination Transition Plan;
 - (ii) meeting with the County's Authorized Representative as soon as practicable after a Notice of Termination has been given, to discuss the Termination Transition Plan and transition activities to be performed under this Section 31.1; and
 - (iii) provided that the County is current in payment of the Contract amounts owed by the County to the Contractor (except for disputed amounts and withholdings in accordance with this Contract), continuing to perform the

Work terminated in accordance with the requirements of this Contract after the Date of Termination for the purposes of transition to the extent accepted by the Contracting Officer under the Termination Transition Plan or otherwise directed by the Contracting Officer (and this provision shall survive termination of the Contract);

- (g) transfer title and deliver to the County in the manner, at the times, and to the extent directed by the Contracting Officer:
 - (i) fabricated or unfabricated materials, supplies, and Goods constituting Work in process, and all other products of uncompleted Work;
 - (ii) completed Work, supplies, and other Goods procured as part of, or acquired in connection with, the performance of the Work terminated; and
 - (iii) completed or partially completed designs, plans, drawings, information, documentation, and other items that would have been required to be completed and submitted to the County if this Contract had been fully performed;
- (h) if directed by the Contracting Officer in the case of a Notice of Termination delivered under Article 29 (Termination for convenience), use its Reasonable Efforts in accordance with Good Industry Practice to sell Goods procured in connection with the performance of the part of the Work terminated in the manner, at the times, to the extent, and at the price(s) directed or authorized by the Contracting Officer, provided that:
 - (i) the Contractor is not required to extend credit to any purchaser;
 - (ii) the Contractor may acquire any such Goods under the prescribed conditions; and/or
 - (iii) proceeds of any such transfer or disposition shall be applied or otherwise credited to reduce payments made by the County to the Contractor under the Contract;
- (i) take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the County has or may acquire an interest;
- (j) promptly upon Notice, pay any amount due to the County under Section 31.2 (County's right to complete the Work) or otherwise under this Contract;
- (k) vacate and clear the Worksite and any Additional Temporary Interests under Section 6.2 (Access to the Worksite) and Section 15.3 (Vacating the Worksite), except to the extent continued Access is permitted in accordance with this Contract

to complete performance of that part of the Work that has not been terminated by the Notice of Termination;

- (l) comply with all other requirements of the County as may be specified in the Notice of Termination; and
- (m) complete performance of that part of the Work that has not been terminated by the Notice of Termination, as applicable and in accordance with this Contract.

31.2 **County's right to complete the Work**

Upon the County's termination of this Contract in whole or in part under the terms of this Contract, the County will have the right to complete the Work by whatever means and methods it deems advisable. If the Surety does not take over performance of the Work under Section 30.2 (Cure Notice), the County:

- (a) may take over the Work and complete it by contract or otherwise;
- (b) without limiting the generality of Article 33 (Intellectual Property; Ownership; Indemnification), may use the Contractor-Furnished Documents for any purpose;
- (c) will not be required to obtain the lowest prices for completing the Work, but shall make such expenditures that, in the County's sole judgment, best accomplish such completion; and
- (d) in the case of a termination for Contractor Default:
 - (i) may take possession of and use any or all Contractor's Goods, plant, tools, Equipment, and property of any kind, provided by or on behalf of the Contractor for the purpose of completing the Work, or any part of the Work, and shall not be responsible to the Contractor for fair wear and tear. The Contractor shall have no rights in such property during its use by the County in accordance with this Section 31.2(d); and
 - (ii) may charge to the Contractor the expense of completing the Work together with a reasonable charge for engineering, managerial, and administrative services and all other excess costs, as certified by the County.

31.3 **No withholding of cooperation**

- (a) The Contractor shall have no right to withhold or limit any of the Work or any transition obligations under this Article 31 on the basis of any alleged breach of this Contract by the County, other than a failure by the County to timely pay any amounts due based upon a properly submitted and approved invoice for Work rendered during the transition period or any amounts due for such transition services under this Article 31.
- (b) Notwithstanding Article 37 (Claim and Dispute resolution), the County will have the right to seek specific performance of this Article 31 in any court of competent

jurisdiction, and the Contractor hereby waives any causes of action, claims, or defenses that damages are an adequate remedy.

31.4 No damages or anticipatory profit

- (a) The Contractor shall not be entitled to any damages, either known or unknown, whether they be direct, indirect, special, anticipatory, consequential, or any other damages, nor any anticipatory profits on Work not yet performed, as a result of any termination under Article 29 (Termination for convenience) or Article 30 (Termination for Contractor default).
- (b) Payment to the Contractor, if applicable under Article 29 (Termination for convenience), shall constitute the Contractor's exclusive remedy for any termination by the County in accordance with this Contract.

31.5 Remedies not exclusive

The rights and remedies of the County under Articles 29 (*Termination for convenience*), 30 (*Termination for Contractor default*), and 31 are in addition to any other rights and remedies provided by Applicable Law or under this Contract and notwithstanding anything contained in this Contract to the contrary, the County's termination of this Contract shall not waive any right the County may have to claim damages, and the County may pursue any cause of action that it may have by Applicable Law or under this Contract.

31.6 Continuing liability

Whether or not this Contract or any part thereof is terminated, the Contractor shall be liable for any damages to the County resulting from the Contractor's default.

PART J – MISCELLANEOUS

32. INSPECTIONS, ACCESS, AUDIT, AND RECORDS

32.1 County's right of entry to inspect

- (a) The County (and any Person authorized by the County including any Government Entity or any other Indemnified Party) may, at any time, enter the Worksite, and be granted access to the Work for the purpose of:
 - (i) observing or inspecting the Work;
 - (ii) monitoring compliance by the Contractor with its obligations under this Contract;
 - (iii) exercising any right or performing any obligation which the County has under this Contract;
 - (iv) conducting safety investigations; and
 - (v) observing and monitoring testing and commissioning activities.

- (b) When exercising this right, the County must do so (and must ensure any Person authorized by the County does so) in a manner that complies with Section 6.4 (Non-exclusive access).
- (c) The Contractor must:
 - (i) perform the Work so as to minimize any interference with or disruption or delay to the exercise by the County (and any Person authorized by the County) of its right of entry; and
 - (ii) permit the County (and any Person authorized by the County) to carry out any inspection or otherwise exercise its right of entry to the Worksite or on any property adjacent to the Worksite at the same time the Contractor is performing the Work at the times agreed upon between the Contractor and the County, or failing agreement, at the times determined by the County's Authorized Representative and for this purpose ensure that the County (and any Person authorized by the County) has safe, clean, and clear access to the Worksite or on property adjacent to the Worksite for the purpose of carrying out an inspection or otherwise exercising its right of entry; provided that, to the extent the Contractor has control of the Worksite, the County (and any Person authorized by the County) complies with the Contractor's reasonable site access and work health and safety policies and procedures; and
 - (iii) provide access to any relevant systems, registers, manuals, records, financial records, plans, and programs.
- (d) If an inspection identifies Deficient Work or shows that the Contractor has not otherwise complied or is not complying with its obligations under this Contract, the County will be entitled to be reimbursed by the Contractor for the reasonable costs of the inspection including any reasonable administrative costs incurred by the County in relation to the inspection, in addition to the other rights and remedies available to it under this Contract with respect to such Deficient Work or other non-compliance.

32.2 Audits

- (a) In addition to any other specific audit rights that the County may have under this Contract, the County and any Authorized Auditor will have such rights to review and Audit the Contractor, its Subcontractors, and their respective books, records, and documents as the County deems necessary for the purposes of verifying compliance with this Contract, Applicable Law, and Governmental Approvals.
- (b) The County's audit rights include the right to observe the business operations of the Contractor and its Subcontractors to confirm the accuracy of the books, records, and documents.

- (c) This Contract and the Parties as contracting parties, are subject to examination and audit of the California State auditor, at the request of the County or as part of any audit of the County, for a period of three years after the final payment under the Contract, as required by California Government Code Section 8546.7 and any other Applicable Law.
- (d) The Contractor represents and warrants the completeness and accuracy in all material respects of all information it or its agents provide in connection with any audit by the County, and shall require its Subcontractors to warrant the completeness and accuracy in all material respects of all information such Subcontractors provide in connection with such audits.

32.3 Maintenance and inspection of books and information

- (a) The Contractor shall:
 - (i) keep and maintain all its books, records, documents, and information relating to the Project, the Worksite, and the Work, including copies of all original documents delivered to the County:
 - (A) at the Project Office (or such other location acceptable to the County); and
 - (B) in accordance with the applicable terms of this Contract and GAAP, and in accordance with Good Industry Practice; and
 - (ii) Notify the County where such books, records, documents, and information are kept.
- (b) The Contractor shall, without charge, make all of its books, records, documents, and other information relating to the Project, the Worksite, and the Work available for inspection by the County at all times during normal business hours or, where reasonably requested by the County, shall provide a copy of the required books, record, documentation, or other information to the County. The County may conduct any such in-person inspection or request such copies upon 48 hours' prior Notice, or unannounced and without prior Notice where there is good faith suspicion of fraud or criminal activity. When conducting any inspection or review of books, records, documents, and information, the County may review, make extracts, take notes, copy, or otherwise deal with such information, subject to any confidentiality obligations under this Contract.
- (c) Subject to Section 32.3(d), the Contractor shall: (i) retain all of its books, records, documents, and other information relating to the Project, the Worksite, and the Work until the Contract End Date; and (ii) retain all of the books, records, documents, and other information relating to the Project, the Worksite, and the Work it produces or receives (if any), for seven years following the Contract End Date. If any provision of this Contract specifies any longer time period for retention of particular records, such time period will prevail.

- (d) All records that relate to Disputes being processed or actions brought must be retained and made available until any later date that such Disputes and actions are finally resolved. Notwithstanding anything else to the contrary in this Article 32, the Contractor reserves the right to assert that information is legally exempt from disclosure or introduction into evidence in legal actions under Applicable Law.

33. **INTELLECTUAL PROPERTY; OWNERSHIP; INDEMNIFICATION**

33.1 **Title**

Subject to Sections 33.2 (Developed IP) to 33.9 (Intellectual Property Representations and Indemnification) with respect to Intellectual Property:

- (a) Title to portions of the Work for which Progress Payments or other payments are made under this Contract shall pass to the County at the time of payment. The title transferred shall in each case be good, and free and clear from any and all security interests, liens, and/or other encumbrances. The Contractor shall promptly execute, acknowledge, and deliver to the County proper bills of sale or other written instruments of title in a form as required by the County. If title has not been vested in the County previously, title shall pass to the County upon Final Acceptance of the applicable Phase under which the Work was performed (or, where partial Acceptance applies, upon partial Acceptance of the applicable part of the Work).
- (b) The Contractor shall not pledge or otherwise encumber Work to which title has been transferred to the County in any manner that would result in any lien, security interest, charge, and/or claim upon or against that Work.
- (c) The transfer of title of Work to the County shall not constitute or imply the County's Acceptance of any Work. Notwithstanding the transfer of title, the Contractor shall continue to be liable and responsible to the County for any damage to or loss of Work until the transfer of responsibility under Section 18.2(f) (Responsibility for Loss, maintenance, and damage).
- (d) The Contractor at its own expense shall conspicuously mark Goods supplied under the Work as the property of the County; shall not permit such Goods to become commingled with non-County-owned Goods; and shall take such other steps the Contracting Officer may require or regard as necessary to vest title to such Goods in the County free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances.
- (e) The Contractor shall promptly execute, acknowledge, and deliver to the County proper bills of sale or other written instruments of title transferring title to the Work (or part of it) to the County in accordance with this Section 33.1, in such form as is required by the County.

33.2 **Developed IP**

- (a) The Contractor acknowledges and agrees that all Developed IP, in any medium, is specially ordered or commissioned by the County, and is, and shall be, considered a work-made-for-hire as that term is defined in 17 U.S.C. § 101 (the U.S. Copyright Act of 1976). If any Developed IP is not the proper subject matter or is determined not to be a work-made-for-hire pursuant to the U.S. Copyright Act, the Contractor hereby assigns, and shall cause all Contractor-Related Entities to assign, to the County all rights, title and interest in and to the Developed IP including any Contractor-Furnished Document or other deliverable and/or work product. The Contractor agrees to execute, and shall cause all Contractor-Related Entities to execute, such further documents and to do such further acts as may be necessary to perfect, register, or enforce the County's ownership of such rights, in whole or in part. If any Contractor-Related Entity fails or refuses to execute any such documents, the Contractor for itself and on behalf of any Contractor-Related Entity hereby appoints the County as the necessary Contractor-Related Entity's attorney-in-fact (this appointment is irrevocable and is coupled with an interest) to act on the Contractor-Related Entity's behalf and to execute such documents. The Contractor hereby forever waives and agrees never to assert, and shall cause any Contractor-Related Entity to waive and never to assert, against the County, its successors or licensees any and all "moral rights" (including claims based on 17 U.S.C. §§ 101 et seq. (the Copyright Act of 1976, as modified), specifically including 17 U.S.C. § 106A(a) (the Visual Artists Rights Act of 1990, "VARA")) that such Contractor-Related Entity may have in Intellectual Property or Contractor-Furnished Document(s) or other deliverable(s) and/or work product(s) even after expiration or termination of this Contract.
- (b) All Contractor-Furnished Documents or other deliverables and/or work product authored, created, or developed under or for the purpose of this Contract, the Work (including any services, tasks and/or system or software maintenance) or the Project shall be owned by the County immediately upon creation or generation, physically or digitally, and whether or not such Contractor-Furnished Documents or other deliverables and/or work product have been delivered to the County under the terms of this Contract.
- (c) The Contractor shall deliver to the County all Contractor-Furnished Documents or other deliverables and/or work product authored, created, or developed under or for the purpose of this Contract (i) at the time(s)/date(s) pursuant to this Contract, or (ii) as soon as reasonably practicable after such creation or generation, but in no event later than the Date of Termination.

33.3 **Contractor IP**

- (a) The Contractor hereby grants, and shall cause each Contractor-Related Entity to grant, to the County the Base License Rights solely in connection with the Work or the Project. The Contractor acknowledges and agrees that all rights, title, or license(s) granted under this Article 33 will survive any expiration or earlier

termination of this Contract without regard to convenience, default, or other causation.

- (b) The Contractor shall identify and disclose to the County all Contractor IP required by, incorporated in, or combined with the Work or the Project.
- (c) Subject to Section 33.6 (IP Escrow), the Contractor shall deliver to the County all IP Materials incorporating Contractor IP (i) within 30 days following the Effective Date, (ii) within 30 days following authorship, creation, development or invention, or (iii) as required pursuant to the Contract Documents, whichever is latest.

33.4 **Third Party IP**

- (a) Subject to Section 33.4(c), the Contractor shall secure license(s) in the name of the County for the Base License Rights of Third Party IP, in connection with the Work or the Project, including a representation and warranty that Third Party IP does not infringe the rights, including intellectual property rights, of any Person. To the extent that the foregoing license rights or representation and warranty are refused by any owner of Third Party IP, the Contractor shall secure the County's prior written approval, in its sole discretion, for any license, the terms of which are acceptable to such owner of Third Party IP. For the avoidance of doubt, in no event shall the Contractor incorporate Third Party IP into the Work or the Project without first securing such licenses.
- (b) The Contractor shall obtain from each owner of Third Party IP consent to have all necessary IP Materials related to Third Party IP, including but not limited to source code, documentation and/or related instructions and materials to execute software deposited into an IP Escrow pursuant to the requirements of Section 33.6 (IP Escrow). No Third Party IP shall be incorporated into the Work or the Project without the County's prior written approval, in its sole discretion, to the extent the owner of the relevant Third Party IP has not provided such consent.
- (c) Commercially Available Off-the-Shelf Software (COTS). The Contractor shall secure license(s) in the name of the County based on commercially available terms for the COTS, including any standard end user license agreement. If the COTS license terms fail to provide the complete Base License Rights, the Contractor shall provide (i) an outline of such license deficiencies and (ii) the identification of at least one other COTS available for the same purpose, function or design. The Contractor shall identify and disclose to the County all COTS required by, incorporated in, or combined with the Work or the Project.

33.5 **County IP and County Data**

- (a) The County hereby grants to the Contractor-Related Entities a limited, non-exclusive license to use, exploit, manufacture, distribute, reproduce, adapt and display the Developed IP, the County IP, and County Data, and any Contractor-Furnished Documents or other deliverables and/or work product incorporating such Intellectual Property, solely in connection with and limited to the Allowed Uses.

"Allowed Uses" are: (a) incorporation into the Project; and (b) performance, provision, furnishing, and discharge of the Work under the Contract. All rights not specifically granted in this Section 33.5 are reserved to the County. For the avoidance of doubt, no rights to trademarks of the County, whether registered or not (the "**County Marks**"), are granted to the Contractor and the Contractor may not incorporate, refer to, or otherwise use the County Marks for any marketing, promotional, or advertising purposes.

- (b) In addition to the Contractor's obligations and restrictions related to County Data in this Contract, the Contractor acknowledges and agrees that all County Data, including the results or creation of any anonymization, de-identification, aggregation, or other analysis of such County Data, whether physical or digital, is owned by the County. Except as specifically provided in this Contract, no Contractor-Related Entity shall make use of County Data even if such use is for such Contractor-Related Entity's internal use or analysis, whether or not commercial value is available or received, and/or such information or data is available in other, separate or cumulative sources.
- (c) Notwithstanding any other term or condition of this Contract, the rights and permissions granted under this Section 33.5 shall terminate (i) upon the Date of Termination or (ii) upon 24-hour written notice by the County to the Contractor, whichever is earlier.

33.6 **Delivery**

Excluding COTS pursuant to Section 33.4(c) (Third Party IP), but in addition to any Contractor-Furnished Documents or other deliverables and/or work product to be delivered to the County under this Contract, the Contractor shall deliver, or cause to be delivered, to the County all IP Materials. Only to the extent that the Contractor can demonstrate to the County's reasonable satisfaction that such delivery would eliminate or substantially limit the legal protections for, or commercial value of, IP Materials incorporating Contractor IP or Third Party IP, the Contractor shall comply, and cause Contractor-Related Entities to comply, with the IP Escrow deposit requirements of Section 33.6 (IP Escrow), provided that such delivery to the County or deposit into IP Escrow(s) shall occur at the earlier of (a) when such Contractor-Furnished Documents or other deliverables and/or work product is due under the Contract Documents, (b) within 60 days after the Effective Date of this Contract, or (c) 60 days prior to the Date of Termination.

33.7 **Payment Inclusive**

The Contractor acknowledges and agrees that the sum of all payments made pursuant to this Contract shall include all royalties, fees, costs, and expenses arising from or related to the software, firmware, systems, or any licenses granted under this Article 33. For the avoidance of doubt, all fees, costs, and expenses for IP Escrow(s) are included in such payments paid to the Contractor by the County under this Contract.

33.8 IP Escrow

- (a) The County and the Contractor acknowledge that the Contractor, Contractor-Related Entities, and/or owners of Third Party IP may not wish to deliver the required IP Materials directly to the County pursuant to this Contract as public disclosure could deprive such owners of Intellectual Property of its commercial value. The Contractor further acknowledges that the County nevertheless must be guaranteed access to such IP Materials and the complete enjoyment of all rights, including Intellectual Property rights, granted pursuant to this Contract, and must be assured that the IP Materials are delivered to the County.
- (b) In lieu of delivering the IP Materials directly to the County pursuant to this Contract, subject to the requirements of Section 33.6 (Delivery), the Contractor, Contractor-Related Entity, or the owner of Third Party IP may deposit relevant IP Materials with a neutral depository. In such event, the County and the Contractor shall: (i) mutually select one or more escrow companies or other neutral depositories (each an "**IP Escrow Agent**") engaged in the business of receiving and maintaining escrows of software source code or other intellectual property; (ii) establish one or more escrows (each an "**IP Escrow**") with the IP Escrow Agent on terms and conditions reasonably acceptable to the County and the Contractor for the deposit, retention, audit, upkeep, and release of IP Materials to the County pursuant to this Contract (which shall, for the avoidance of doubt, include the Release Conditions); (iii) determine a date for each deposit of the IP Materials into the IP Escrow; and (iv) determine a process for releasing from escrow the IP Materials to be delivered to the County pursuant to this Contract. The Contractor shall be responsible for the fees and costs of the IP Escrow Agent and IP Escrow(s).
- (c) Any IP Materials deposited in IP Escrow(s) shall be released and delivered to the County in any of the following circumstances ("**Release Conditions**"):
 - (i) this Contract expires or terminates for any reason;
 - (ii) voluntary or involuntary bankruptcy of the Contractor, Contractor-Related Entity, or the owner of Third Party IP; or
 - (iii) the Contractor, Contractor-Related Entity, or the owner of Third Party IP is dissolved or liquidated or otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining, and servicing the software, product, part, or other item containing the relevant Intellectual Property.

The County shall maintain the confidentiality of any IP Materials released pursuant to this Section 33.8, and may enter into a non-disclosure agreement with any third party to whom the County, in its sole discretion, grants access to such IP Materials to the extent that such IP Materials contain confidential information.

- (d) Audit. Regardless of whether one of the Release Conditions occurs, the County shall have the right to require the IP Escrow Agent to verify the relevance,

completeness, currency, accuracy, and functionality of the IP Materials held by the IP Escrow in a manner and form as directed by the County. In the event such testing demonstrates the IP Materials held by the IP Escrow do not correspond to the Project or comply with this Contract, the Contractor shall deposit the correct materials with the IP Escrow Agent within 72 hours following notice by the County.

33.9 Contractor-Related Entities

Notwithstanding any other provision in this Contract to the contrary, the Contractor acknowledges and agrees that it shall direct, and be responsible for, the compliance of all Contractor-Related Entities with the obligations and restrictions of this Article 33 and shall incorporate the provisions of this Article 33 into each agreement involving development, provision, or acquisition of Intellectual Property or the creation or generation of any Contractor-Furnished Documents or other deliverables and/or work product.

33.10 Intellectual Property Representations and Indemnification

- (a) The Contractor represents and warrants that:
 - (i) the Contractor owns all rights, title, and interest, or sufficient license thereto, to provide all rights and license grants to the County under this Contract;
 - (ii) the Contractor has received written confirmation from each Contractor-Related Entity that such Contractor-Related Entity owns all rights, title, and interest, or sufficient license thereto, to provide all rights and license grants to the County under this Contract;
 - (iii) no Contractor IP or Intellectual Property owned, licensed, or provided to the County under this Contract by any Contractor-Related Entity infringes the proprietary rights, including Intellectual Property rights, of any third party person or entity (A) as delivered to the County, (B) as incorporated into the Work or the Project, (C) as used by the County or any County vendor, representative, or designated agent, and (D) alone or in combination with software, hardware, firmware, or other equipment prior to the expiration or any termination of this Contract.
- (b) IP Indemnification. In addition to any other indemnification provisions of this Contract, to the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Indemnified Parties from and against any and all third-party claims, actions, legal or administrative proceedings, demands, costs, judgments, liens, penalties, liabilities, damages, losses, and expenses, including any judgments, interest, settlement amounts, losses, damages (statutory or actual), reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnified Party ("**Matters**"), by reason of any such Matter arising out of or relating to any actual or alleged infringement of any intellectual property rights by any Intellectual Property, alone or as incorporated into the Project, the Work,

software, Contractor-Furnished Documents, or other deliverables and/or work product, or any use thereof.

- (i) The Contractor shall have no liability or obligation under this Section 33.10(b) with respect to any Matter to the extent based upon:
 - (A) the County's failure to use claimed Intellectual Property in accordance with the documentation, written specifications, written instructions, and user manuals provided by the Contractor to the County;
 - (B) the County's failure to conform to a Third Party IP license term or condition;
 - (C) Modifications made by persons other than the Contractor after the Term; or
 - (D) any violation of law or third-party rights caused by County Data or County IP.

- (ii) The County will:
 - (A) notify the Contractor of any Matter for which the Contractor has an indemnification obligation under this Section 33.10(b) of which the County has actual knowledge (provided that failure to do so will only release the Contractor from this indemnity obligation to the extent that such failure led to material prejudice);
 - (B) grant the Contractor control of the defense, in coordination with the County, of any such Matter and of all negotiations for its settlement or compromise, (provided that no such settlement or compromise may impose any liability or other obligations on the County); and
 - (C) reasonably cooperate with the Contractor to facilitate the settlement or defense of the Matter.

Notwithstanding the foregoing, the County may participate, at the Contractor's expense, in the defense of such Matter.

- (iii) In the event of any Matter arising against any party that is entitled to be indemnified under this Section 33.10(b), the County may in its sole discretion reserve, retain, and/or apply any monies due to the Contractor under this Contract, for the purpose of resolving such Matters; provided, however, that the County may release such funds if the Contractor gives the County reasonable assurance that the County's interests will be protected. The County will, in its sole discretion, determine whether such assurance is reasonable.

- (iv) The indemnity and defense of claims provisions of this Section 33.9 will survive the expiration or earlier termination of this Contract and remain in full force and effect.
- (c) Without limiting any other rights or remedies available to the County under the law or under this Contract, if the Work, software, the Contractor-Furnished Documents or other deliverables and/or work product, in whole or in part, are, or in the Contractor's judgment may become, the subject of any infringement claim, or is likely to be, claimed to infringe, misappropriate, or otherwise violate any third party intellectual property right, the Contractor will, at its sole expense and with the concurrence of the County, do one of the following:
 - (i) procure for the County the necessary right to continue using such Intellectual Property, and as incorporated into the Project, Work, software, Contractor-Furnished Documents, or other deliverables and/or work product; or
 - (ii) replace or modify the infringing portion of the Intellectual Property, and as incorporated into any instruments of service, so that they become non-infringing.

Without prejudice to any other sanctions under Applicable Law, if, in the sole discretion of the County, the Contractor's solution under this Section 33.10(c) fails to eliminate liability or potential liability to the County, the County may give Notice of the default to the Contractor and the Contractor's Surety, and if the default is not cured as provided in Article 30 (Termination for Contractor Default), this Contract may be terminated for default in accordance with its terms, or the County may exercise any other remedy it has under this Contract or Applicable Law.

34. **CONFIDENTIALITY AND COMMUNICATIONS**

34.1 **Contractor's duty of confidentiality**

- (a) During the Term, any information, data, figures, records, findings, and the like received or generated by the Contractor in connection with the performance of this Contract (other than any information released or published in the public domain prior to execution of this Contract or as expressly intended or authorized by the County), shall be considered and kept as the private and privileged records of the County, and will not be divulged to any Person except:
 - (i) to those Persons and to the extent directly authorized by the County by Notice; and
 - (ii) to a Contractor-Related Entity who:
 - (A) requires direct access to that information to assist the Contractor, or act on its behalf, in relation to limited purpose of the Contractor's performance of the Work;

- (B) is informed by the Contractor of the confidential nature of the information and of the terms of this Article 33.1; and
 - (C) has executed an acknowledgement of the terms of this Article 34. Upon request by the County, the Contractor shall provide copies of each executed acknowledgement to the County.
- (b) Following the Contract End Date, the Contractor must continue (and must ensure that each Contractor-Related Entity continues) to treat as private and privileged any information, data, figures, records, and the like, and will not release any such information to any Person, either by statement, deposition, or as a witness, except upon direct written authority of the County or as required by Applicable Law.
 - (c) In the event that the Contractor is required by Applicable Law to disclose any part of the information, the Contractor shall immediately (and in any case within 24 hours) Notify the County so that the County may file an action to obtain a court order that the requested information is exempt from disclosure and/or seek a protective order or other appropriate remedy.
 - (d) Except for the disclosures expressly permitted under this Section 34.1, the Contractor shall not publish information or Technical Data acquired or generated by the Contractor in connection with the performance of this Contract until such time as such information or Technical Data is released in published reports by the County.
 - (e) Any breach of this Section 34.1 will constitute a breach of this Contract and will subject the Contractor, regardless of whether the person responsible for the breach is the Contractor or another Contractor-Related Entity, to damages in accordance with this Contract and any other remedies available to the County at law or equity. The Contractor indemnifies, defends, and holds harmless the County in the event that litigation must be filed to recover and protect any improperly disclosed documents as a result of violation of this Section 34.1 by the Contractor.

34.2 **Contractor's interaction with the media and the public**

- (a) Unless otherwise specified in the Project Requirements, the County shall manage and coordinate all external communications on the Project.
- (b) Unless the Contractor has obtained the County's prior approval:
 - (i) the Contractor shall not make any public announcement or disclosure with respect to the Contract, the Work, or the Project, whether for publication in the press, radio, television, or any other medium; and
 - (ii) the Contractor shall not allow the County-related copy to be published in its advertisements, marketing material, or public relations programs, or on its website or other online platforms.

The Contractor shall ensure that any information to be published pursuant to the County's prior Notice of approval under this Section 34.2 is factual and that it does not in any way imply that the County endorses the Contractor's firm, services, or products.

- (c) The Contractor shall refer all inquiries from the news media relating to this Contract or the Work to the County, and shall comply with the direction of the County's Authorized Representative for media relations regarding statements to the media. The Contractor shall not provide interviews with any news media outlet unless specifically authorized in advance and supervised by the County public relations staff.
- (d) The Contractor shall designate a staff person acceptable to the County to assume the lead for the Contractor in complying with its obligations under this Section 34.2.
- (e) While the County has the primary responsibility for all public interface on this Project, if the Contractor is made aware of impacts on the community resulting from the Work, the Contractor must provide details of community impacts and subsequent mitigation plans to the County.
- (f) If the Contractor receives a complaint from a member of the community with respect to the Project, the Work, or this Contract, the Contractor shall inform the County promptly, and in any event within 24 hours after receipt of the complaint, and shall comply with the direction of the County.
- (g) The County will Notify the Contractor at least five Business Days in advance of a media related site visit to the construction area.
- (h) The Contractor shall assist the County in the mitigation of impacts to the community through the creation and dissemination of notices. Notices may be required for any activities taking place in the public right-of-way, activities on private property, or any activities which may have a public impact (e.g. utility shutoffs, road closures). The Contractor shall provide written notice to all affected parties in an agreed-upon radius from the point of activity at least five Days prior to the anticipated event. The Contractor shall submit a copy of the proposed notice to the County for review at least 10 Days prior to distribution of the notice.

35. **CALIFORNIA PUBLIC RECORDS ACT**

The Contractor acknowledges and agrees that Section 4 of Exhibit 4 (Regulatory Requirements) shall apply and the Contractor must comply with all obligations under such provisions.

36. **ASSIGNMENT AND TRANSFER**

36.1 **Assignment by the Contractor**

The Contractor shall not assign, transfer, pledge, mortgage, or otherwise encumber any of its rights or obligations under this Contract without the written consent of the County.

36.2 **Assignment by the County**

The County may, upon prior Notice to the Contractor, but without the Contractor's consent, assign all or any part of its rights, title, and interests in and to this Contract, the Worksite, or the Performance Bonds and Payment Bonds to any other Government Entity that:

- (a) succeeds the governmental powers and authority of the County; and
- (b) has sources of funding to perform the payment obligations of the County under this Contract that are at least as adequate and secure as the County's at the time of the assignment.

36.3 **Change of Organization or Name**

- (a) The Contractor shall not change the legal form of its organization or its name without delivering to the County and obtaining the County's acceptance of, a Contractor Initiated Change Proposal under Section 26.1 (Contractor Initiated Change Proposal) setting out the proposed change in legal form or name and such supporting documentation as is necessary to enable the County to evaluate the proposed change.
- (b) If the County changes its name, the County agrees to promptly (and in any event within 10 Days of such change) furnish the Contractor with a Notice of such name change, together with supporting documentation demonstrating such name change.

37. **CLAIM AND DISPUTE RESOLUTION**

37.1 **Claims**

(a) **General**

As a condition to pursuing any Claim under or in connection with this Contract, the Contractor must meet all requirements for submittal of a Claim under this Section 37.1 and any additional Contract requirements applicable to the Claim in question.

(b) **Notice of Intent to Claim**

- (i) The Contractor shall deliver a Notice of intent to Claim (a "**Notice of Intent to Claim**" or "**NOIC**") to the County within 10 Days after:
 - (A) issuance of a Change Order under Section 25.5 (Directed Change) that the Contractor disputes;
 - (B) denial of a Request for Change under Section 25.9 (Request for Change) that the Contractor disputes; or
 - (C) the occurrence of any other act, event, or condition under this Contract giving rise to a potential Claim.
 - (ii) Each Notice of Intent to Claim must:
 - (A) be clearly marked 'Notice of Intent to Claim';
 - (B) include a statement that the Contractor intends to submit a Claim;
 - (C) describe the event or condition that the Contractor asserts may give rise to a Claim; and
 - (D) identify the Phase and elements of Work affected by the event or condition that may give rise to a Claim.
 - (iii) Failure to deliver a NOIC in accordance with this Section 37.1 shall constitute a waiver by the Contractor of any right, equitable or otherwise, to bring any such Claim against the County.
- (c) **Submittal of a Claim**
- (i) Subject to having delivered a timely Notice of Intent to Claim, the Contractor shall deliver a Claim in writing and clearly marked 'Claim' within 60 Days after the occurrence of the act, event, or condition under Section 37.1(b)(i) giving rise to the Claim, in sufficient detail for the County to evaluate the Claim, including:
 - (A) a statement that it is a Claim under this Section 37.1(c) and referencing and attaching the related NOIC as delivered to the County;
 - (B) a full and detailed description of the event or condition that the Contractor asserts has given rise to the Claim, together with any supporting information;
 - (C) identification of the Phase and elements of Work affected by the event or condition that has given rise to the Claim;
 - (D) full details of the additional compensation and/or time claimed and any other legal, equitable, or contractual relief or remedy under the Claim, together with a Certificate of Current Cost or Pricing Data and any

other supporting information necessary for the County to evaluate the relief or remedy being sought;

- (E) full details of the basis for the Claim, including any proposed interpretations of the provisions of this Contract on which the reasons for the Claim are based;
 - (F) as an attachment, any related Change Orders and/or any related Requests for Change and the County determinations, that the Contractor disputes;
 - (G) for any Claims based in whole or in part on an alleged Excusable Delay, an updated Time Impact Analysis and Current CPM Schedule identifying the affected activities, the actual impacts, and the number of days of Delay and a progress report against the accepted mitigation action plan for the Delay;
 - (H) the reference number of the Claim; and
 - (I) any other additional information requested by the County to evaluate the Claim.
- (ii) The Contractor will have the burden of proving each of the items under Section 37.1(c)(i).
 - (iii) Except as otherwise provided in California Public Contract Code, Article 1.5 of Chapter 1 of Part 3, entitled Resolution of Construction Claims ("**California Public Contract Code Article 1.5**"), each Claim over \$50,000 shall be accompanied by the following certification:

"I certify that the Claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable; and that I am duly authorized to certify the Claim on behalf of the Contractor."
 - (iv) To the extent that any information included in the Claim was previously described in the related NOIC and remains unchanged, the Contractor may include the information by reference to the NOIC instead of duplicating it in the Claim, provided that the Contractor shall remain obliged to supplement the initial information included in a NOIC with any further information or other developments since delivery of the related NOIC.
 - (v) Failure to deliver a Claim in accordance with this Section 37.1 shall constitute a waiver by the Contractor of any right, equitable or otherwise, to bring any such Claim against the County.

(d) **Response to Claim**

- (i) Following a reasonable review of the Claim and no later than 45 Days after receipt of a Claim delivered by the Contractor in accordance with this Section 37.1, the County shall provide the Contractor with a Notice of response identifying what portion of the Claim is disputed and what portion is undisputed, provided that the time frame for the County issuing its Notice of response may be extended by mutual agreement of the County and Contractor or as otherwise provided by California Public Contract Code Section 9204(d)(1)(C).
- (ii) Failure by the County to respond to a Claim within the required time period shall result in the Claim being deemed rejected and disputed in its entirety.
- (iii) If the Contractor disputes the County's response to a Claim, the Contractor may by Notice to the County demand an informal conference to meet and confer, and the County shall schedule a meet and confer conference for a Claim within 30 Days of receipt of any such demand.
- (iv) Within 10 Business Days following the conclusion of the meet and confer conference for a Claim, the County shall provide the Contractor with a further Notice identifying the portions of any Claim that remain in dispute and any portion of the Claim that is no longer in dispute.
- (v) If the County does not respond in this timeframe, the Claim shall be considered disputed and denied in its entirety.
- (vi) Disputed portions of the Claim shall be submitted to Alternative Dispute Resolution following the procedures in Section 37.2 with the Parties agreeing to a mediator or other ADR process within 10 Business Days after the disputed portion of the Claim has been identified by Notice or is deemed identified or as otherwise agreed upon by the Parties.
- (vii) Where additional compensation is sought under an undisputed portion of a Claim, the undisputed amount of the Claim shall be paid by the County within 60 Days after the County issues its Notice of response identifying that undisputed portion.

(e) **Claims subject to California Public Contract Code Article 1.5**

Certain Claims under this Contract may be subject to the provisions of California Public Contract Code Article 1.5 Sections 20104 et seq. Where those provisions apply, the Contractor shall comply with the requirements for Claims and other requirements in this Contract that are not inconsistent with those provisions. Unless otherwise agreed to by the County and the Contractor in writing, the ADR process conducted pursuant to Section 37.2 shall excuse any further obligation under California Public Contract Code Article 1.5 Section 20104.4 to mediate after litigation has been commenced.

(f) **California Government Code Claims**

- (i) If the Contractor disputes the County's decision, or if the County fails to make a decision with respect to a Claim delivered in accordance with this Section 37.1, the Contractor may file a Claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the California Government Code ("**California Government Code Claim**"), within the time limits set out in the California Government Code.
- (ii) Except as set forth in California Public Contract Code Section 20104.2, the procedures set out in this Section 37.1 or elsewhere in this Contract do not (in any manner, fashion, or degree) waive, delete, or supersede the obligations of a claimant to fully comply with the California Government Code Claim requirements.

(g) **No Claim after Final Acceptance**

The Contractor shall not be eligible to, and shall not make any Claims in relation to a Phase or the Work under a Phase (or in relation to any Committed Work where Section 2.3(e) (Failure to agree to a Phase 2 Supplement) applies) after the County executes a Certificate of Final Acceptance for that Phase (or for that Committed Work where Section 2.3(e) (Failure to agree to a Phase 2 Supplement) applies) under Section 18.3 (Final Acceptance). The Contractor's Notice of request for Final Acceptance and the Contracting Officer's issuance of a Certificate of Final Acceptance shall constitute a full accord and satisfaction with respect to all Claims, actual or potential, known or unknown, with respect to the Work to which that request and Certificate applies.

(h) **Accord and satisfaction**

A Claim (or part of a Claim) resolved by a Modification shall constitute a full accord and satisfaction.

(i) **Unresolved Claims**

Claims that are not resolved by a Modification or otherwise remain disputed after the Parties have followed the Claims procedures in this Section 37.1, may be subject to the ADR procedures under Section 37.2.

37.2 Disputes

(a) **General**

- (i) If the Dispute involves a Claim by the Contractor, the Contractor shall comply with and be subject to Section 37.1.
- (ii) Except as expressly set out in this Contract, if any Dispute arises that doesn't involve a Claim:

- (A) the Contracting Officer and the Contractor's Authorized Representative shall, upon Notice from a Party to the other of a Dispute, negotiate in good faith in an attempt to come to an agreement to resolve the Dispute; and
 - (B) if a Dispute cannot be resolved by the Contracting Officer and the Contractor's Authorized Representative within 90 Days, then the Dispute may be referred to an individual at the next highest administrative level within the County and an individual at an equivalent level within the Contractor, who shall negotiate in good faith in an attempt to come to an agreement to resolve the Dispute.
- (iii) Disputes that are not resolved by a Modification or otherwise, and remain disputed after the Parties have negotiated in good faith in an attempt to come to an agreement to resolve the Dispute in accordance with this Section 37.2, shall, unless otherwise agreed by the Parties, be subject to the Alternative Dispute Resolution procedures under Section 37.2(b).
 - (iv) In the absence of and at any time prior to agreeing to a settlement to the Dispute, a determination under litigation filed with respect to the Dispute or a binding ADR result with respect to the Dispute (where the Parties have agreed that the results of the ADR will be binding in accordance with this Contract), the Contracting Officer may, upon its own initiative, or upon the written request of the Contractor, make a determination of the Dispute and any such the County determination shall be binding upon the Parties pending any final determination of the Dispute under this Section 37.2.
 - (v) If necessary, Disputes (or elements of a Dispute) that are not resolved by this Section 37.2 or the ADR procedures under Section 37.2(b) shall be determined by litigation filed in the San Bernardino County Superior Court in accordance with Article 38 (Governing law and jurisdiction).
 - (vi) All Disputes and negotiations shall be documented by each Party in writing, including the specifics of each Dispute and actions taken.
- (b) **Alternative Dispute Resolution**
- (i) If a Claim or other Dispute is referred to the ADR procedures under this Contract, the terms of this Section 37.2(b) shall apply. The Parties will agree to the form of ADR procedure to be utilized to resolve a Claim or other Dispute. If the Parties are unable to agree to the form of ADR procedure, then the County may determine the form of ADR procedure.
 - (ii) The results of any ADR with respect to a Dispute shall not be binding on either the County or the Contractor unless, subject to Applicable Law:

- (A) the Parties have either:
 - (aa) separately and mutually agreed in writing, prior to commencement of the ADR, that the ADR will be binding and under what terms (including what discovery will be permitted and how the ADR process will be conducted); or
 - (bb) after commencement of the ADR, both Parties expressly agree in writing by a separate agreement that it will be binding; and
- (B) if, due to the nature or amount of the Dispute, the results of ADR require final approval by the Board to be binding on the County or the Contractor, the Board has approved the results of ADR with respect to the Dispute.
- (iii) The Parties may agree that the time for the filing of a California Government Code Claim shall be tolled during the pendency of an ADR process. The terms of the tolling agreement shall be subject to the agreement of the Parties.
- (iv) If the ADR procedure to be utilized for a Dispute is a Dispute Review Board:
 - (A) the DRB shall consist of one member selected by the County, one member selected by the Contractor, and a third member selected by the County and the Contractor or, if the County and the Contractor fail to agree on a third member within 20 Days of selection of the first two members, the third member shall be selected by the first two members. The third member shall be the chairperson of the DRB;
 - (B) the third member and chairperson of the DRB must be an attorney licensed to practice law in the State of California with at least ten years of experience actively engaged (at least half their practice) in advising on construction law matters or a retired member of the judiciary affiliated with an established dispute resolution service provider such as JAMS, ADR Services, Inc. or other similar service provider;
 - (C) each DRB member must be free from any conflict of interest with all of the Parties and shall not show any partiality or appearance of impropriety to either the County or to the Contractor;
 - (D) if a DRB agreement has not previously been executed by the Parties with respect to this Contract, the County, the Contractor, and the three DRB members shall execute a DRB agreement prior to the commencement of any DRB proceedings, which shall provide a process for fairly hearing, in accordance with this Contract, the referred Dispute and any future Disputes that are specifically referred to the DRB in accordance with Section 37.2(b)(i). The DRB Agreement shall:

- (aa) incorporate the terms set out in this Section 37.2(b)(iv); and
 - (bb) include an express provision acknowledging that the execution by the Parties and the three DRB members of a DRB agreement shall at no time act as a waiver of the Parties rights under Section 37.2(b)(i) or otherwise prevent the Parties from agreeing to, or the County directing, another form of ADR procedure to be utilized to resolve a Claim or other Dispute under Section 37.2(b)(i);
- (E) a DRB hearing shall be held promptly after the County and the Contractor have submitted a Dispute to the DRB and in any case within 30 Days of referral, unless a shorter or longer time is agreed upon for a particular Dispute, taking into consideration the urgency of the matter and its likely impact on the Schedule, the particular circumstances of the matter, and the time required by the County and the Contractor to prepare documentation regarding the Dispute;
 - (F) after the conclusion of the DRB hearings, the DRB shall submit to the Parties its written recommendations for the resolution of the referred Dispute;
 - (G) if the County and the Contractor agree with the DRB's recommendations, they will enter into a Modification to implement such recommendations; and
 - (H) the DRB recommendations are of no force and effect and are inadmissible in any subsequent litigation or other action at law or in equity unless otherwise agreed by the Parties under Section 37.2(b)(ii).
 - (I) The execution by the Parties of a DRB agreement under Section 37.2(b)(iv)(D) shall at no time act as a waiver of the Parties rights under this Section 37.2(b)(i) or otherwise prevent the Parties from agreeing to, or the County directing, another form of ADR procedure to be utilized to resolve a Claim or other Dispute under this Section 37.2(b)(i).
- (v) If the ADR procedure to be utilized for a Dispute is a mediation:
 - (A) the Parties shall mutually agree to and select a mediator or, if an agreement cannot be reached by the Parties within 10 Business Days of submittal of the Dispute to mediation, each Party shall select a mediator and those mediators shall select a qualified neutral third party to mediate the Dispute;

- (B) any mediator selected must be free from any conflict of interest with all of the Parties and shall not show any partiality or appearance of impropriety to either the County or to the Contractor;
 - (C) unless otherwise agreed upon by the Parties under Section 37.2(b)(ii), no mediator will be empowered to render a binding decision as to any Dispute or to make any findings or reduce their recommendations or decisions to writing;
 - (D) each mediation must be:
 - (aa) administered in accordance with the American Arbitration Association ("**AAA**") Commercial Industry Mediation Rules and Procedures then in effect, as amended by the provisions of this Section 37.2;
 - (bb) held in San Bernardino County, California; and
 - (cc) concluded within 30 Days of the date of selection of the mediator, or within such other time period as may be agreed to by the Parties (acting reasonably having regard to the nature of the Dispute), or at the discretion of the mediator having regard to the nature of the Dispute; and
 - (E) if the County and the Contractor reach agreement pursuant to a mediation, they will enter into a Modification to implement such recommendations.
- (vi) If the ADR procedure to be utilized for a Dispute is an arbitration:
- (A) the arbitration must be conducted pursuant to the AAA Rules for Commercial Disputes or, if the Parties agree, the AAA Rules for Construction Disputes, or any other rules or procedures agreed by the Parties (the "**Rules of Arbitration**"), as amended by the provisions of this Section 37.2. The use of the rules promulgated by the AAA neither requires nor implies that the arbitration must be administered by the AAA;
 - (B) unless the Parties agree that the arbitration of the Dispute will be conducted by a single arbitrator appointed by agreement of the Parties, one arbitrator will be selected by the County, one arbitrator will be selected by the Contractor, and a third arbitrator, that will also be the chairperson, will be selected by the first two arbitrators;
 - (C) the arbitration will take place in San Bernardino County, California and will be conducted in English;

- (D) the arbitration will not be limited to a review of any previous decision or recommendation of the Dispute Review Board and will be de novo. Discovery will be permitted in accordance with the Uniform Arbitration Act, California Code of Civil Procedure Section 1280, et seq. Any prior decision of the Dispute Review Board with respect to the referred Dispute may be submitted to the arbitration hearing only if agreed upon by the Parties;
 - (E) the Parties agree to act in good faith to ensure that the hearing is completed within 120 Days from the submittal of the Dispute to arbitration, and the arbitrator will be directed to issue a ruling within 30 Days of the date of the completion of the hearing or to ensure that completion of the hearing or issuance of the ruling occurs within such other time periods as may be agreed upon by the Parties (acting reasonably having regard to the nature of the Dispute) or at the discretion of the arbitrator(s) (having regard to the nature of the Dispute);
 - (F) the award of the arbitrator will not be binding, and the findings are inadmissible and may not be used by either Party in any concurrent or subsequent litigation or other action at law or in equity, unless otherwise agreed by the Parties under Section 37.2(b)(ii); and
 - (G) if the Parties accept the findings of the arbitration, the Parties will enter into a Modification to implement such findings.
- (vii) In addition to any matters expressly excluded under this Contract, the following categories of Claims and other Disputes are excluded from consideration by an ADR procedure:
- (A) interest (monetary) on Progress Payments or Final Payment;
 - (B) wage and hour Disputes;
 - (C) Claims under the jurisdiction of the Required Insurances, which includes, without limitation, the Contractor's automobile insurance;
 - (D) delegated signature authority of any of the County's Authorized Representatives;
 - (E) Disputes regarding matters governed by Environmental Law or any grant agreement from any Government Entity;
 - (F) Disputes on issues covered by policies of the County Board;
 - (G) stated dollar value of liquidated damages under or assessments made as a result of enforcement of Article 19 (Liquidated damages for Noncompliance Events);

- (H) Disputes regarding safety issues or matters under the jurisdiction of Cal-OSHA;
- (I) the right of the County to issue Change Orders;
- (J) issues related to subcontractor substitutions governed by California Public Contract Code Section 4100 et seq.; or
- (K) stated dollar value of liquidated damages under Section 17.4 (Liquidated damages for Delay).

If the County and the Contractor do not agree as to whether a Claim or other Dispute falls into any of the excluded categories under this Section 37.2(b)(vii), the County shall make the determination by Notice, subject to legal review by the County's legal representatives.

- (viii) The County and the Contractor shall share equally the fees and expenses of the ADR services and process, including administrative services, such as conference facilities and secretarial services. The Contractor shall pay the invoices for all such fees and expenses, after approval by both Parties. After receipt of the Contractor's paid invoice for ADR services, the County shall reimburse the Contractor 50% of such paid invoices within 30 Days.

(c) **Accord and satisfaction**

A Dispute (or part of a Dispute) resolved by a Modification (whether following negotiation or an ADR procedure) shall constitute a full accord and satisfaction.

37.3 Performance During Claim or other Dispute

The Contractor shall proceed diligently with performance of this Contract pending resolution of any Claim or other Dispute, appeal, or action ensuing under this Contract, except for any performance the Contracting Officer determines by Notice should be delayed, suspended, or terminated as a result of such Claim or Dispute.

38. GOVERNING LAW AND JURISDICTION

This Contract will be governed by and interpreted in accordance with the laws of the State, and to the extent applicable, by the laws of the United States. By entering into this Contract, the Contractor consents and submits to the jurisdiction of the courts of the State over any action at law, suit in equity, or other proceeding that may arise out of this Contract.

39. NOTICES

39.1 General

- (a) Any notice legally or otherwise required to be given by one Party to another under this Contract must be in writing, dated, signed by a duly authorized representative

of the Party delivering the notice, addressed, and delivered in accordance with this Article 39 and otherwise compliant with any additional Contract requirements applicable to the notice in question (such notice, if in compliance with this Article 39, a "**Notice**").

- (b) This Article 39 is not intended to apply to submission of invoices and Applications for Progress Payments, which shall be submitted in accordance with Article 23 (Procedure for Payment).
- (c) Subject to Section 39.1(d), in the following circumstances, a Notice may be delivered electronically via email communication or any other database or other software program that the County has by Notice directed or permitted the Contractor to use:
 - (i) Contractor-Furnished Documents, Notices accepting, approving, rejecting, or commenting on Contractor-Furnished Documents, Request for Information, Change Notices, Change Orders, and Modifications (other than the Phase 2 Supplement) or other communications required to be delivered in an electronic format under the terms of this Contract, may be delivered and received electronically by email communication or any other database or other software program that the County has by Notice directed or permitted the Contractor to use for such purpose, provided that, in the case of Change Notices, Change Orders, and Modifications, such Notice shall be followed by an identical physical copy delivered by personal delivery or by delivery via certified mail or recognized overnight mail or courier service in accordance with this Article 39; and
 - (ii) other Notices (including Requests for Change and Cost and Schedule Proposals) may be delivered by email communication, provided that such Notice shall be followed by an identical physical copy delivered by personal delivery or by delivery via certified mail or recognized overnight mail or courier service in accordance with this Article 39.
- (d) Where physical delivery is prescribed by Applicable Law or the Notice is delivered under Article 29 (Termination for Convenience), Article 30 (Termination for Contractor Default), or Article 37 (Claim and Dispute Resolution), the Notice must be delivered by personal delivery or by delivery via certified mail or recognized overnight mail or courier service in accordance with this Article 39 or as otherwise expressly required under Applicable Law or Article 29 (Termination for Convenience), Article 30 (Termination for Contractor Default), or Article 37 (Claim and Dispute Resolution) (as applicable).
- (e) If a Notice is delivered personally in accordance with this Article 39, the Party delivering the Notice shall take a copy of the Notice to the delivery (such copy to be retained by the delivering Party) and the Party receiving the Notice shall stamp or notate both the original form of Notice and the copy form of Notice as "Received" and noting the date and time of receipt.

- (f) Subject to Section 39.1(g), a Notice delivered in accordance with this Article 39 is deemed to be delivered to the addressee in the case of:
 - (i) personal delivery, on receipt;
 - (ii) delivery by certified mail or recognized overnight mail or courier service, on the date of receipt or on the date that receipt at the appropriate address is refused, as shown on the records of the U.S. Postal Service, courier service, or other Person making the delivery;
 - (iii) electronic delivery by email communication or any other database or other software program that the County has directed or permitted (by written Notice) the Contractor to use, on the date of transmission (provided the physical copy is also delivered where required under this Article 39).
- (g) All Notices (including Notices sent electronically by email communication or any other database or software program permitted under this Article 39) delivered after 5:00 p.m. PST will be deemed to be delivered on the first Business Day following delivery.

39.2 **Notice Transmittals from Contractor**

Unless otherwise agreed under a Modification or waiver, a Notice from the Contractor to the County shall not be effective for any purpose whatsoever unless it is addressed and delivered to the County's Authorized Representative with the subject matter of the Notice, with a copy to the Contracting Officer:

- (a) enclosed in a sealed envelope, and:
 - (i) delivered personally;
 - (ii) sent by certified mail, return receipt requested; or
 - (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or
- (b) where permitted under Section 39.1, sent electronically by email communication or any other database or other software program that the County has by Notice directed or permitted the Contractor to use, and if required, followed by delivery of a physical copy in accordance with Section 39.2(a)(i), (ii), or (iii),

to the following addresses (or to such other addresses as the County may designate by Notice from time to time):

Name: San Bernardino County
Address: 620 South E Street
San Bernardino, CA 92415-0184

Attention: The applicable Authorized Representative, in accordance with this Section 39.2

Copy to: Ron O'Neal, Project Manager
Email: Ronald.ONEal@pfm.sbcounty.gov

39.3 **Notice Transmittals to Contractor**

Unless otherwise agreed upon under a Modification, all Notices to the Contractor from the County shall be:

- (a) enclosed in a sealed envelope, and:
 - (i) delivered personally;
 - (ii) sent by certified mail, return receipt requested; or
 - (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or
- (b) where permitted under Section 39.1 (General), sent by email communication, or any other database or other software program that the County has by Notice directed or permitted the Contractor to use, followed by delivery of a physical copy in accordance with Section 39.3(a)(i), (ii), or (iii),

to the following address (or to such other address as the Contractor may designate by Notice from time to time):

Name: Hensel Phelps Construction Co.

Address: 18850 Von Karman Avenue, Irvine, California 92612

Email: ebain@henselphelps.com

Attention: Eric Bain

40. **OTHER**

40.1 **Amendments**

Except in the case of a Change Order issued in accordance with this Contract, this Contract can only be amended or replaced by a written instrument duly executed by the Parties.

40.2 **Waiver**

- (a) No waiver of any provision, covenant, or condition of this Contract will be valid unless in writing and executed by the Party benefiting from that provision, covenant, or condition.

- (b) Either Party's waiver of any breach or failure to enforce any of the provisions, covenants, or conditions of this Contract at any time will not in any way limit or waive that Party's right to subsequently enforce or compel strict compliance with every provision, covenant, or condition of this Contract, despite any course of dealing or custom of the trade.
- (c) If the Parties make and implement any interpretation of this Contract without documenting such interpretation in accordance with Section 1.2(a) (General) or otherwise by a Modification, such interpretation and implementation will not be binding in the event of any future Disputes.

40.3 No exclusion

Nothing in this Contract is intended to limit the County's liability for fraud, active negligence, or a violation of Applicable Law.

40.4 No double recovery

Despite any other provision of this Contract to the contrary, neither Party will be entitled to recover compensation or make a Claim under this Contract with respect to any Loss that it has incurred to the extent that it has already been compensated with respect to that Loss pursuant to this Contract or otherwise.

40.5 Organizational conflicts of interest

The Contractor shall not perform Work under this Contract which would constitute or create an organizational conflict of interest, according to the County's Conflict of Interest Policy for Design-Build and Progressive Design-Build Projects.

40.6 Agent to accept service

The Contractor shall maintain within San Bernardino County a duly authorized agent to accept service of legal process ("**Authorized Agent**") on its behalf, and shall keep the County advised of such Authorized Agent's name and address during the entire Term and for three years thereafter, or as long as the Contractor has warranty obligations under the Contract, whichever period terminates later. The Authorized Agent on the date of this Contract is identified in Section 39.3 (Notice Transmittals to Contractor). If at any time the Contractor does not meet the above requirement to maintain and identify to the County its Authorized Agent, the Contractor agrees that the Secretary of State of the State of California shall be the Contractor's Authorized Agent for service of legal process.

40.7 Independent contractor; no agent, joint venture, or partnership

- (a) The Contractor and its Subcontractors are independent contractors, and nothing contained in this Contract will be construed as constituting any relationship with the County of agent, servant, employee, partnership, joint venture, or other association.
- (b) In no event will the relationship between the Parties be construed as creating any relationship whatsoever between the County and the Contractor's or any

Subcontractor's employees and the employees and agents of one Party shall not be, and shall not be construed to be, the employees or agents of the other Party for any purpose whatsoever.

- (c) Unless otherwise expressly provided in this Contract, the Contractor has sole authority and responsibility to employ, discharge, and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors, and for all other Persons that the Contractor or any Subcontractor hires to perform or assist in performing the Work.

40.8 **No personal liability**

No officer, agent, representative, or employee of the County, or any other Indemnified Party will be personally liable under any provision of this Contract, or because of the execution or attempted execution of this Contract, or because of any breach of this Contract.

40.9 **Successors and assigns**

This Contract is binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.

40.10 **Survival of obligations**

The following provisions will survive the expiration or Early Termination of this Contract:

- (a) Article 3 (Representations and Warranties);
- (b) Section 13.2 (Performance and Payment Bonds);
- (c) Article 16 (Quality);
- (d) Article 21 (Warranties);
- (e) Article 27 (Indemnity from the Contractor);
- (f) Article 33 (Intellectual Property; Ownership; Indemnification);
- (g) Article 34 (Confidentiality and Communications);
- (h) Article 37 (Claim and Dispute Resolution);
- (i) Article 38 (Governing law and jurisdiction);
- (j) Article 40 (Other);
- (k) Exhibit 1 (Definitions);
- (l) the express obligations of the Parties following the Contract End Date;

- (m) any obligations to pay amounts under this Contract; and
- (n) all other provisions which by their inherent character should survive expiration or Early Termination of, or completion of the Work under, this Contract.

40.11 **Limitation on third party beneficiaries**

Nothing contained in this Contract is intended to or will be construed as creating or conferring any rights, benefits, or remedies upon, or creating any obligations of the Parties toward, any Person not a party to this Contract, except rights expressly contained in this Contract for the benefit of the Indemnified Parties.

40.12 **Integration of this Contract**

- (a) The Parties agree and expressly intend that this Contract (including all Exhibits) constitutes a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.
- (b) No part of this Contract may be separated from any other part for the purposes of assumption or rejection under Section 365 of Title 11 of the United States Bankruptcy Code.

40.13 **Entire Agreement**

This Contract (including all Exhibits and documents incorporated into this Contract by inclusion or by reference) contains the entire understanding of the Parties with respect to the subject matter of this Contract and supersedes all prior agreements, understandings, statements, representations, and negotiations, oral or written, between the Parties with respect to their subject matter.

40.14 **Severability**

If any clause, provision, Article, Section, subsection, Exhibit, or part of this Contract is ruled invalid (including due to a change in law) by a court having proper jurisdiction, the invalidity or unenforceability of any clause, provision, Article, Section, subsection, Exhibit, or part will not affect the validity or enforceability of the balance of this Contract, which will be construed and enforced as if this Contract did not contain such invalid or unenforceable clause, provision, Article, Section, subsection, Exhibit, or part.

40.15 **Counterparts**

This Contract may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

40.16 **Covenant against contingent fees**

- (a) The Contractor warrants that no person or Contractor Representative has been specifically employed or retained to solicit or obtain this Contract in exchange for a contingent fee, except a bona fide employee or bona fide agent. A breach or

violation of this warranty shall be considered a breach of Contract pursuant to Article 30 (Termination for Contractor Default). In addition to any rights and remedies otherwise provided for in the Contractor by law, the County may deduct from the Total Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.

- (b) "Bona fide agent", as used in this Section 40.16, means an established commercial or selling entity that is maintained by the Contractor for the sole purpose of securing business and that neither exerts nor proposes to exert improper influence to solicit or obtain County contract(s) nor holds itself out as being able to obtain any County contract(s) through improper influence.
- (c) "Bona fide employee", as used in this Section 40.16, means a person who is employed by the Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance and who neither exerts nor proposes to exert improper influence to solicit or obtain County contract(s) nor holds itself out as being able to obtain any County contract(s) through improper influence.
- (d) "Contingent fee", as used in this Section 40.16, means any commission, percentage, or other sum that is payable only upon success in securing a County contract.
- (e) "Improper influence," as used in this Section 40.16, means any influence that induces or tends to induce a County employee, officer, contractor, subcontractor, the County's Authorized Representative, or consultant to give consideration or to act regarding any contract entered into by the County on any basis other than the merits of the matter.

40.17 **Indirect Loss**

- (a) The Parties waive claims for any Indirect Losses. This mutual waiver includes:
 - (i) damages incurred by the County for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of each person; and
 - (ii) damages incurred by the Contractor for principal office expenses, including the compensation of personnel stationed there, for losses of financing, business, and reputation, and for loss of profit except anticipated profit arising directly for the Work.
- (b) This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination in accordance with Part I (Termination). Nothing contained in this Section 40.17 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of this Contract.

41. **CONTRACT EXECUTION**

41.1 **Electronic Signatures**

The Parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the Party whose name is contained therein. Each Party providing an electronic signature agrees to promptly execute and deliver to the other Party an original signed Contract upon request.

41.2 **Signatories**

This Contract is delivered by Hensel Phelps Construction Co., the Contractor, to the County for acceptance by its Board of Supervisors at San Bernardino, California, and is deemed to have been entered into at San Bernardino, California.

[Signature page follows]

SAN BERNARDINO COUNTY

(Print or type name of corporation, company, contractor, etc.)

▶ _____
Dawn Rowe, Chair, Board of Supervisors

By ▶ _____
(Authorized signature - sign in blue ink)

Dated: _____

Name _____
(Print or type name of person signing contract)

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

Title _____
(Print or Type)

By _____
Deputy

Dated: _____

Address _____

IN WITNESS WHEREOF, the Board of Supervisors of San Bernardino County has caused this Contract to be subscribed by its duly authorized officers, in its behalf, and the said Party of the second part has signed this Contract.

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
▶ _____ Daniel Pasek, Deputy County Counsel	▶ _____ Sarah Riley, Chief of Project Management	▶ _____ Moe Yousif, Interim Director PFMD
Date _____	Date _____	Date _____