

**PRE-DEVELOPMENT AGREEMENT**  
**BETWEEN THE COUNTY OF ORANGE AND GRIFFIN/SWINERTON, LLC**  
**FOR WORKFORCE REENTRY CENTER**

THIS PRE-DEVELOPMENT AGREEMENT (hereinafter referred to as “AGREEMENT”) is entered into on \_\_\_\_\_, 2024 (“AGREEMENT DATE”)

**BY AND BETWEEN** County of Orange, a political subdivision of the State of California (hereinafter referred to as “COUNTY”),

**AND**

Griffin / Swinerton, LLC, a State of Delaware limited liability company (hereinafter referred to as “DEVELOPER”),

which are sometimes individually referred to as “PARTY” or collectively referred to as “PARTIES.”

**RECITALS**

A. COUNTY is the fee owner of certain real property, with a portion commonly referred to as the County of Orange’s Old Animal Shelter and sometimes known as the Manchester Complex, and a portion commonly referred to as Theo Lacy Facility’s Red Sector, consisting of approximately 4.604 acres located at 561 The City Drive South in the City of Orange, CA (the “PROPERTY”) identified in Exhibit A.

B. COUNTY is interested in developing the PROPERTY for public use as a Workforce Reentry Center, including the construction and operation of a facility establishing a business-based program to provide justice-involved individuals with training to develop, produce, and provide the goods and/or services to be delivered as part of the business operation of a vocational rehabilitative program (the “PROJECT”).

C. Government Code Sections 25515, *et seq.*, allows counties to develop county-owned property through a joint venture with a private entity for certain enumerated uses; and pursuant to Government Code Section 25515.1, COUNTY may do any of the following: (1) sell or lease “any of its real property to any person, partnership, corporation or government entity the [Board of Supervisors] selects for purposes of cultural, residential, commercial, or industrial use or development; (2) “participate as a principal party in the development of cultural, residential, commercial, or industrial uses or development thereof as a public works project”; (3) “contract for management, operation, or leasing of its real property for these same purposes.” All such development pursuant to Government Code Sections 25515, *et seq.*, constitutes a valid public

purpose. COUNTY has determined that the development of the PROPERTY by a private entity through a partnership with COUNTY will result in a public and economic benefit to COUNTY.

D. DEVELOPER has developed properties similar to the PROPERTY, including the public-private partnership development of public, community, and commercial facilities in other cities and counties.

E. Consistent with Government Code Sections 25515, *et seq.*, and in an effort to institute programs consistent with Government Code sections 26600 (reentry programs) and 27771 (probation supervision), and to fulfill a Strategic Priority in the County's OC CARES 2025 Vision plan adopted by the Board, on March 14, 2023, COUNTY issued a Request for Qualifications (the "RFQ"). The RFQ was released for the PROJECT pursuant to Government Code Sections 25515, *et seq.*, and was not a traditional design-bid-build or design-build contractor solicitation.

F. DEVELOPER responded to the RFQ and submitted a statement of qualifications to COUNTY on July 27, 2023, which contemplated a multi-phase project implementation, including refinements to the site design and facility programming into a final site plan, schematic design, design development, approvals/entitlements, and a Guaranteed Maximum Price ("GMP") in close collaboration with and approval by COUNTY ("PHASE 1"); and DEVELOPER's completion of construction drawings and vertical development of the PROJECT ("PHASE 2").

G. After conducting a multi-step RFQ evaluation process that included a review of written statements of qualifications and an oral interview, COUNTY selected DEVELOPER on February 27, 2024, to develop programming and negotiate the terms required for a more definitive future agreement or agreements related to designing, entitling, constructing, operating, and maintaining the PROJECT (further described in Exhibit B).

H. Following COUNTY's selection of DEVELOPER pursuant to the RFQ, the PARTIES executed a written Exclusive Negotiation Agreement ("ENA"). DEVELOPER has provided certain professional and planning services to COUNTY relating to the PROJECT under the ENA.

I. The PARTIES intend that this AGREEMENT is for PHASE 1 and a Development Agreement will be negotiated by the PARTIES and executed for PHASE 2 upon County Board of Supervisors' approval and subject to the terms hereof.

J. COUNTY desires to engage DEVELOPER with the intent that DEVELOPER will implement the PROJECT as envisioned in the RFQ and according to DEVELOPER's proposed multi-phase approach, and to provide the services as described herein, including the PHASE 2 SERVICES (defined below) (to be provided under the Development Agreement the PARTIES intend to execute at the conclusion of the PHASE 1 SERVICES provided under this AGREEMENT) upon County Board of Supervisors' approval and subject to the terms hereof.

K. COUNTY and DEVELOPER are each entering into this AGREEMENT with the intent that DEVELOPER will provide all of the SERVICES (PHASE 1 and PHASE 2) required to

fully and completely develop the PROJECT in accordance with the RFQ and DEVELOPER's multi-phase approach, subject to COUNTY's approval of the results of the PHASE 1 SERVICES, which are required before commencement of PHASE 2 SERVICES.

L. After completion of the PHASE 1 SERVICES described herein, COUNTY may commence PHASE 2 by entering into a Development Agreement (to be negotiated by the PARTIES) and related documentation (e.g., additional documentation COUNTY may require, but DEVELOPER will not be a party to, which may include the lease or operating agreements for the ultimate management of the PROJECT once completed, collectively, the "Lease Documents") for the development of the PROPERTY.

M. The PROJECT, this AGREEMENT and the Development Agreement (to be negotiated by the PARTIES) for PHASE 2 are authorized by applicable law, including but not limited to Government Code Sections 25515, *et seq.*

**NOW, THEREFORE, IT IS AGREED** by and between the PARTIES hereto as follows:

### **1. Retainer**

1.1 COUNTY does hereby retain DEVELOPER to perform the PHASE 1 SERVICES as defined in Section 2.

1.2 DEVELOPER shall assign one or more principals to perform the SERVICES. The principals assigned by DEVELOPER and whose expertise and services are offered by DEVELOPER and accepted by COUNTY are Roger Torriero and Korin Crawford, acting in their capacity as principals of DEVELOPER.

1.3 DEVELOPER may employ such consultants, as well as Developer's Construction Manager at Risk ("CMAR"), as DEVELOPER determines appropriate for performance of portions of DEVELOPER's obligations under this AGREEMENT; provided, however, that DEVELOPER will remain responsible for all such obligations and the acts and omissions of DEVELOPER's consultants. The term "Consultants" refers to any professional directly retained by DEVELOPER for provision of any of the SERVICES required to be performed by DEVELOPER under this AGREEMENT. DEVELOPER's employment of Consultants will not relieve DEVELOPER from the performance of its own responsibilities pursuant to this AGREEMENT. However, all consultants contracting separately with COUNTY (if any) shall be independently liable to COUNTY for the performance of the work pursuant to their agreements, and DEVELOPER shall have no liability for work by consultants contracting separately with COUNTY.

1.4 DEVELOPER intends to retain LPA Design Studios as the architect for the schematic design and design development phases of architectural services ("Architect") for PHASE 1 and the construction documents and construction observation phases for PHASE 2. The plans and specifications to be prepared by Architect and approved by the PARTIES for the schematic design phase are referred to as the "Schematic Design Documents." The final, permitted set of plans and specifications to be prepared by Architect and approved by the PARTIES for the

construction document phase are referred to as the “Construction Documents.” DEVELOPER intends to retain Swinerton Builders as Developer’s CMAR to perform the pre-construction services (“Developer’s CMAR”). DEVELOPER will have the right to select or replace all or any of the Consultants (including the Architect) and Developer’s CMAR, with COUNTY’s prior consent, which will not be unreasonably withheld, conditioned, or delayed. COUNTY consents to DEVELOPER retaining LPA Design Studios as Architect and Swinerton Builders as Developer’s CMAR for the PHASE 1 and/or PHASE 2 SERVICES.

## **2. PROJECT and SERVICES.**

### **2.1 Description of PROJECT.**

- (a) The PROJECT includes two phases as follows:
  - (1) PHASE 1 – Pre-Development Services
  - (2) PHASE 2 – Construction Documents and Construction Services

### **2.2 Description of SERVICES.**

For purposes of this AGREEMENT, the term “SERVICES” includes both the PHASE 1 SERVICES and the PHASE 2 SERVICES. DEVELOPER shall first provide the PHASE 1 SERVICES pursuant to this AGREEMENT, which includes determining a Guaranteed Maximum Price (“GMP”) for the PROJECT. Upon completion of the PHASE 1 SERVICES, COUNTY will then either (a) terminate this AGREEMENT or (b) have DEVELOPER perform the PHASE 2 SERVICES.

### **2.3 Description of PHASE 1 SERVICES.**

PHASE 1 includes development of basis of design, schematic design services, entitlement package, assistance with third-party environmental review, and design development services culminating in a COUNTY approved design development set of plans and specifications (“Approved Design Development Plans and Specifications”) for the PROJECT in accordance with COUNTY standards and procedures and applicable local, state, and federal requirements. DEVELOPER shall also deliver to COUNTY a GMP (which shall also refer to the associated documentation related to the work to be performed for a Guaranteed Maximum Price) for the delivery of the PROJECT, complete and operational. DEVELOPER will deliver the GMP in accordance with the schedule described in Exhibit C. The PHASE 1 SERVICES are described in detail in Exhibit D. COUNTY has furnished or made available to DEVELOPER various studies, surveys, reports, maps, legal descriptions, and other documents (collectively, the “PROPERTY DOCUMENTS”) relating to the PROPERTY. COUNTY acknowledges that DEVELOPER is entitled to, and is in fact relying on the accuracy and completeness of services, information, conclusions, and recommendations in the PROPERTY DOCUMENTS in the performance of the PHASE 1 SERVICES. If any additional services are required or additional costs or expenses are incurred by DEVELOPER resulting from the PROPERTY DOCUMENTS being inaccurate or

incomplete, DEVELOPER shall submit a written request to COUNTY (“Request for Change”) requesting a written confirmation from COUNTY granting to DEVELOPER additional time, scope, and/or additional compensation (“Change Order”) and COUNTY will issue the Change Order; which additional compensation shall not exceed amounts billed at cost for the additional services, costs or expenses, plus additional DEVELOPER fixed fee and/or DEVELOPER fixed overhead.

#### 2.4 Description of PHASE 2 SERVICES.

PHASE 2 SERVICES include completion of the construction documents, and construction of the PROJECT. These services include preparation of the 100% construction documents, construction observation by the design team, competitive bidding of trade contractors, construction, and PROJECT close-out, all as will be more fully set forth in the Development Agreement. COUNTY shall provide a PHASE 2 PROJECT budget to DEVELOPER in accordance with the schedule described in Exhibit C.

#### 2.5 COUNTY Election to Terminate or Proceed to PHASE 2

(a) COUNTY will have sixty (60) days after DEVELOPER submits its GMP to COUNTY to elect one of the following options:

(1) Terminate this AGREEMENT;

(2) Proceed with the PROJECT, in which case the PARTIES will proceed pursuant to the Development Agreement that the PARTIES will negotiate in good faith to achieve their goals, comply with legal requirements, include the budget, schedule, and scope exhibits, or that may be necessary or desirable to the PARTIES.

(b) GMP will become void and unenforceable if COUNTY fails to provide written notice of its election to DEVELOPER within sixty (60) days because COUNTY will be deemed to have elected the option to terminate this AGREEMENT if the PARTIES have not agreed in writing to extend this deadline.

(c) If COUNTY and DEVELOPER are unable to agree as to the GMP and terms of the Development Agreement in accordance with subsection (a), then at the end of the sixty (60) day period, this AGREEMENT will terminate.

#### 2.6 Conflicts.

In the event Exhibits D or E shall be in conflict with any provision of this AGREEMENT, Exhibits D or E, as applicable, shall prevail.

#### 2.7 Contingency.

(a) COUNTY’s contingency are funds to be used at the discretion of COUNTY usually to cover, among other things, any increases in PROJECT costs that result from COUNTY directed changes or unforeseen site conditions (“COUNTY’s Contingency”). For COUNTY’s convenience, if requested by COUNTY, DEVELOPER will include COUNTY’s Contingency

as a separate line item in DEVELOPER's budget(s) for PHASE 1 and/or PHASE 2. Markups for overhead, profit, taxes, and insurance will be applied by DEVELOPER at the time that COUNTY's Contingency is used. Any COUNTY Contingency not utilized shall remain as COUNTY's funds after PROJECT completion. COUNTY must approve in writing, as authorized by the Chief Real Estate Officer or designee, any use of COUNTY's Contingency.

(b) The amount of DEVELOPER Contingency (defined below) will be noted as a separate line item in the budget for each phase and shall reflect DEVELOPER's risk for the PROJECT. DEVELOPER's Contingency is a fund to cover cost growth or unexpected or unforeseen costs that may arise during the PROJECT ("DEVELOPER's Contingency"). DEVELOPER has a DEVELOPER Contingency line item in the PHASE 1 budget (Exhibit E) and will have a separate DEVELOPER Contingency line item in DEVELOPER's PHASE 2 budget. The amount of DEVELOPER's Contingency for PHASE 1 and PHASE 2 will be separate line items in the applicable budgets. DEVELOPER's Contingency for each PHASE may be used at DEVELOPER's discretion with COUNTY's approval, which will not be unreasonably withheld, conditioned, or delayed.

(c) DEVELOPER's budget (Exhibit E) for PHASE 1 includes line items for DEVELOPER's Contingency and Allowances. "Allowances" are funds allocated for known future costs that have not been specified with a high enough degree of detail to enable an accurate estimate of costs to be created. Allowances are usually associated with materials the owner intends to select after the contract is formed. Payment for any Allowance identified in Exhibit E shall be for direct cost reimbursement only, unless Exhibit E identifies it as a "Time and Materials" or "T&M" item. Reimbursable direct costs shall be verified by invoices and shall include any amounts paid to third parties, and do not include markups, including but not limited to supervision, labor, overhead, or profit related to the item. Payment for any work to be performed in connection with any Allowance identified in Exhibit E will be made by COUNTY as part of the normal payment procedures for the PROJECT. Any costs that exceed the maximum amount of any Allowance line item shall be addressed as a change to this AGREEMENT.

(d) DEVELOPER's Contingency in Exhibit E may be used at DEVELOPER's discretion with COUNTY's approval, which will not be unreasonably withheld, for increases in the cost of the PHASE 1 SERVICES which are not COUNTY's responsibility. However, the DEVELOPER may not apply DEVELOPER's Contingency to DEVELOPER's fixed fee.

## 2.8 GMP.

DEVELOPER will prepare the GMP in accordance with COUNTY's reasonable requests based on the Approved Design Development Plans and Specifications (including all addenda). COUNTY, DEVELOPER, Developer's CMAR, and the Architect will all approve by digital signature on the Approved Design Development Plans and Specifications (including all addenda) upon which DEVELOPER's GMP for PHASE 2 is based. DEVELOPER will cause the Architect

to make the Approved Design Development Plans and Specifications (including all addenda) electronically available to COUNTY.

2.9 Construction Schedule.

An updated/revised PROJECT Schedule will be included with the GMP that reflects the Approved Design Development Plans and Specifications.

2.10 Savings.

In PHASE 1, all savings from the budget (Exhibit E) shall be fully for the benefit of COUNTY.

2.11 GMP Review and Approval.

(a) DEVELOPER will meet with COUNTY, Architect, and Developer's CMAR to review the GMP and the written statement of its basis. If COUNTY discovers inconsistencies or inaccuracies in the information presented, DEVELOPER will make adjustments as necessary to the GMP, its basis or both. COUNTY, DEVELOPER, Architect, and Developer's CMAR will each review and digitally sign the Approved Design Development Plans and Specifications upon which the GMP will be based. The Approved Design Development Plans and Specifications shall comport with the preliminary building program set forth in Exhibit F (and any approved revisions thereto). COUNTY will attend meetings during each design phase and will have the opportunity to review the design documents at those meetings as the design documents are being developed. COUNTY will have 30 days to review and approve in writing (via digital signature) each set of design documents (schematic and design development) when they are deemed completed and delivered by DEVELOPER to COUNTY. If COUNTY approves a set of design documents, on which DEVELOPER relies, then later directs DEVELOPER to make material changes to the approved documents, then COUNTY will pay DEVELOPER for the actual cost of making such revisions as an additional cost through a Change Order. For example, if COUNTY approves the Schematic Design Documents, but then during the Design Development phase directs a change to a PROJECT component that was previously agreed to in the Schematic Design Documents, then the cost of making those COUNTY directed revisions will be deemed a valid Change Order.

(b) DEVELOPER may be requested to, or at its own discretion may, submit a revised GMP for consideration by COUNTY, including reducing scope, quality, or features if necessary to bring the PROJECT within budget reflecting the anticipated scope and timing of the PROJECT that is deemed fair and reasonable to DEVELOPER. At that time, COUNTY may do one of the following:

(1) Accept DEVELOPER's original or revised GMP without comment, if within COUNTY's budget.

(2) Accept DEVELOPER's original or revised GMP that exceeds COUNTY's budget, and indicate in writing to DEVELOPER that the PROJECT budget has been increased to fund the differences through an amendment to this AGREEMENT.

(3) Reject DEVELOPER's original or revised GMP because it exceeds COUNTY's budget and the independent third party's estimate, in which event COUNTY may terminate this AGREEMENT and/or elect to not enter into the Development Agreement with DEVELOPER for PHASE 2.

(4) With DEVELOPER's consent, wait to accept the GMP if COUNTY believes adequate funding will be available in the near future.

(c) If during COUNTY's review of the GMP, design changes are required or requested by COUNTY, then DEVELOPER will authorize and cause its Consultants to revise the Approved Design Development Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP. Such revised documents will be furnished to COUNTY. The provisions of Section 2.11(a) apply to determine whether COUNTY is responsible for paying for the revisions. COUNTY will promptly notify DEVELOPER in writing if any such revised documents are inconsistent with the agreed-upon assumptions and clarifications.

#### 2.12 PHASE 1 Schedule.

DEVELOPER will perform the PHASE 1 SERVICES in accordance with the schedule in Exhibit C.

### **3. Assistance and Cooperation by and between COUNTY and DEVELOPER.**

3.1 COUNTY and DEVELOPER shall assign an appropriate staff member (or members) to work with each other in connection with the work of this AGREEMENT. COUNTY designates its Chief Real Estate Officer or designee as "COUNTY Representative." DEVELOPER designates Roger Torriero and Korin Crawford as DEVELOPER Representatives. Each PARTY may change its designated representative by giving written notice to the other PARTY of the name and contact information for the new representative. The Representatives' duties will consist of the giving of advice and consultations, providing information in a timely manner as requested by each other, assisting each other in negotiations with other public agencies and private parties, miscellaneous items which in the judgment of DEVELOPER or COUNTY's staff warrant attention, and all other duties as may be described in Exhibit D. The Representatives will be the single points of contact between the PARTIES and will be responsible for obtaining information from others within their organization or team (*e.g.*, COUNTY Representative is responsible for obtaining information from other departments within COUNTY in accordance with the Project Schedule, DEVELOPER Representative is responsible for obtaining information from DEVELOPER's Consultants and Developer's CMAR in accordance with the Project Schedule).



3.2 All of the activities described in Exhibit D, however, shall be the primary responsibility of DEVELOPER to schedule, initiate and carry through to completion, except to the extent that they rely on receiving information from COUNTY; COUNTY is responsible for timely providing necessary information.

#### **4. Non-Employment of COUNTY and DEVELOPER Personnel.**

4.1 DEVELOPER and COUNTY agree that they will neither negotiate, offer, nor give employment to any full-time, regular employee of the other PARTY in professional classifications of the same skills required for the performance of this AGREEMENT who is involved in this PROJECT in a participatory status during the life of this AGREEMENT regardless of the assignments said employee may be given or the days or hours employee may work.

4.2 Nothing in this AGREEMENT shall be deemed to make DEVELOPER, or any of DEVELOPER's employees or agents, agents or employees of COUNTY, or deemed to make COUNTY, or any of COUNTY's employees or agents, agents or employees of DEVELOPER. DEVELOPER shall be an independent contractor and shall have responsibility for and control over the details and means for performing the work, provided that DEVELOPER is in compliance with the terms of this AGREEMENT. Anything in the AGREEMENT which may appear to give COUNTY the right to direct DEVELOPER as to the details of the performance of the work or to exercise a measure of control over DEVELOPER shall mean that DEVELOPER shall follow the desires of COUNTY, only in the results of the work.

#### **5. Non-Discrimination**

5.1 In the performance of this AGREEMENT, DEVELOPER agrees that it will comply with the requirements of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons.

5.2 DEVELOPER acknowledges that a violation of this provision shall subject DEVELOPER to all the penalties imposed for a violation of the California Labor Code. The Development Agreement will include a trade contractor procurement plan that will comply with applicable competitive bidding laws and COUNTY's local vendor preference policies.

#### **6. Employee Eligibility Verification**

6.1 DEVELOPER warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens, and others and that all its employees performing work under this AGREEMENT meet the citizenship or alien status requirement set forth in Federal statutes and regulations. DEVELOPER shall obtain from all employees performing work hereunder all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations, including but not limited to, the Immigration Reform and

Control Act of 1986, 8 U.S.C. § 1324 *et seq.*, as they currently exist and as they may be hereafter amended. DEVELOPER shall retain all such documentation for all covered employees for the period prescribed by the law.

6.2 DEVELOPER shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against DEVELOPER or COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this AGREEMENT.

### **7. Termination of AGREEMENT for Cause.**

7.1 If DEVELOPER breaches any material covenant or condition of this AGREEMENT, then COUNTY may send DEVELOPER a notice of default setting forth the nature and extent of the alleged default and, if not otherwise self-evident, the actions necessary to cure the alleged default. DEVELOPER must cure the default within fifteen (15) days after receipt of the notice of default (or if the default is not capable of being cured in such time, DEVELOPER must commence necessary actions to timely remedy such default and thereafter diligently prosecute such cure to completion). If DEVELOPER fails to timely cure the breach, then COUNTY shall have the right to terminate this AGREEMENT upon three (3) days additional written notice prior to the effective day of termination.

7.2 DEVELOPER shall have the opportunity to cure the alleged breach prior to termination as set forth in Section 7.1.

7.3 Should any COUNTY termination for cause subsequently be found to be without merit, such termination for cause shall automatically be converted to a termination for convenience.

7.4 In the event the alleged breach is not cured by DEVELOPER prior to termination, all work performed by DEVELOPER pursuant to this AGREEMENT, which work has been reduced to plans or other documents, shall become the property of and be made available to COUNTY (subject to the provisions of Section 22).

7.5 If COUNTY breaches any material covenant or condition of this AGREEMENT, then DEVELOPER may send COUNTY a notice of default setting forth the nature and extent of the alleged default and, if not otherwise self-evident, the actions necessary to cure the alleged default. COUNTY must cure the default within fifteen (15) days after receipt of the notice of default or if the default is not capable of being cured in such time, then COUNTY must commence to cure the default within fifteen (15) days after receipt of the notice of default and thereafter diligently prosecute such cure to completion. If COUNTY fails to timely cure the breach, then DEVELOPER shall have the right to terminate this AGREEMENT upon three (3) days additional written notice prior to the effective day of termination.

7.6 COUNTY shall have the opportunity to cure the alleged breach during the notice periods set forth herein prior to termination as set forth in Section 7.5.

7.7 If the PROJECT and/or SERVICES are delayed in the aggregate more than 60 calendar days from the Schedule agreed to by the PARTIES for PHASE 1 SERVICES (Exhibit C) because of suspensions, delays, or interruptions of the PROJECT by COUNTY (“COUNTY-CAUSED DELAYS”), then DEVELOPER may terminate the AGREEMENT by providing fifteen (15) days’ written notice to COUNTY of DEVELOPER’S intention to terminate the AGREEMENT. COUNTY-CAUSED DELAYS, as used in this Section 7.7 shall not include any force majeure delays under Section 37 that prevent COUNTY’s performance (“FORCE MAJEURE DELAYS”). If the PROJECT and/or SERVICES are delayed in the aggregate more than 60 calendar days from the Schedule for PHASE 1 SERVICES (Exhibit C) because of FORCE MAJEURE DELAYS, then DEVELOPER may terminate the AGREEMENT by providing fifteen (15) days’ written notice to COUNTY of DEVELOPER’S intention to terminate the AGREEMENT. For clarity, it is the PARTIES’ intent to track the COUNTY-CAUSED DELAYS and FORCE MAJEURE DELAYS separately, each with their own 60-day limit, and DEVELOPER may only terminate if one of the limits has been exceeded. Additionally, instead of terminating the AGREEMENT, the PARTIES may negotiate a mutually acceptable Change Order to equitably increase the time and scope arising from the COUNTY-CAUSED DELAYS and/or FORCE MAJEURE DELAYS. If DEVELOPER terminates the AGREEMENT under this provision, COUNTY shall pay DEVELOPER for all SERVICES performed, all previously authorized unpaid costs incurred, and all reimbursable expenses incurred prior to the effective date of the termination, in accordance with Exhibit E, and such payment shall be DEVELOPER’s sole remedy for termination of this AGREEMENT under this provision.

## **8. Termination of AGREEMENT for Convenience.**

8.1 Notwithstanding any other provision of the AGREEMENT, COUNTY may at any time, and without cause, terminate this AGREEMENT in whole or in part, upon not less than thirty (30) calendar days’ written notice to DEVELOPER. Such termination shall be effected by delivery to DEVELOPER of a written notice of termination specifying the effective date of the termination and the extent of the SERVICES to be terminated.

8.2 DEVELOPER shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by COUNTY.

8.3 COUNTY shall pay DEVELOPER for all costs paid, or incurred but unpaid, for the SERVICES completed and reimbursable expenses incurred prior to the effective date of the termination, according to Exhibit E, and such payment shall be DEVELOPER’s sole remedy under this AGREEMENT.

8.4 Under no circumstances will DEVELOPER be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Section 8.

8.5 DEVELOPER shall insert in all Consultants' contracts that the Consultant shall stop work on the date of and to the extent specified in a written notice of termination, and shall require Consultants to insert the same condition in any lower tier contracts.

### **9. Term.**

The term of this AGREEMENT is not to exceed 18 months commencing upon the AGREEMENT DATE. The term of this AGREEMENT may be mutually extended by the PARTIES as an Amendment to this AGREEMENT.

### **10. Compensation and Extra Work.**

For the SERVICES authorized under this AGREEMENT, DEVELOPER shall be compensated in accordance with the following:

10.1 COUNTY will pay DEVELOPER the compensation (costs and fee) for the PHASE 1 SERVICES as set forth in Exhibit E. DEVELOPER will also be entitled to reimbursement of out-of-pocket costs ("Reimbursables") as they are incurred, which costs are identified in Exhibit E. Reimbursables will be billed at cost and will not exceed what is shown in Exhibit E without an amendment to this AGREEMENT. COUNTY shall reimburse DEVELOPER, as a Reimbursable and identified as being one-in-same with the "Insurance" cost shown in Exhibit E, DEVELOPER's expense (acknowledged and agreed to be \$11.00 per \$1,000 of contract value) for the Commercial General Liability, Employer's Liability, Auto Liability, and Professional Liability insurance required of DEVELOPER by this AGREEMENT. DEVELOPER may allocate savings from other line items to cover cost overruns in other line items or the Reimbursables budget, with notice to COUNTY, so long as doing so does not exceed the total cost set forth in Exhibit E. DEVELOPER's fee and DEVELOPER's overhead for PHASE 1 SERVICES will be fixed amounts as set forth in Exhibit E. DEVELOPER's fixed fee and DEVELOPER's fixed overhead for DEVELOPER's PHASE 1 SERVICES will be deemed earned as billed, and will be billed in equal monthly installments (the number of installments equal to the number of months for the PHASE 1 SERVICES duration under the PROJECT Schedule in Exhibit C); provided, however, that if DEVELOPER completes the PHASE 1 SERVICES in less time, then the unpaid balance of DEVELOPER's fixed fee and DEVELOPER's fixed overhead is due with the final payment to DEVELOPER under this AGREEMENT (i.e., the equal monthly installments are for billing purposes, but the intent is that COUNTY will pay the full amount of DEVELOPER's fixed fee and DEVELOPER'S fixed overhead). If the PHASE 1 SERVICES takes more time due to causes within DEVELOPER's control, then DEVELOPER is not entitled to additional DEVELOPER's fixed fee and DEVELOPER'S fixed overhead compensation. DEVELOPER would only be

entitled to additional fixed fee and/or fixed overhead for COUNTY-CAUSED DELAYS or a COUNTY requested Change Order.

10.2 DEVELOPER's payment applications to COUNTY for PHASE 1 SERVICES shall include, but not be limited to the following:

- DEVELOPER's name and address
- DEVELOPER's remittance address, if different from (A), above
- Name of COUNTY agency/department
- Delivery/service address
- Agreement title and date
- Service Date
- Description of Services
- Total
- Taxpayer ID number
- A list of all Consultants with whom DEVELOPER has entered into contracts, the amount of each Consultant contract, the amount requested for any Consultants in the Application for Payment and the amount to be paid to DEVELOPER from such progress payment.
- A payment breakdown for the PHASE 1 SERVICES for which DEVELOPER and each Consultant is responsible; such breakdown being submitted on a uniform standardized form reasonably approved by COUNTY. The form shall reflect (1) description of services, (2) total value, (3) percent of the services completed to date, (4) value of services completed to date, (5) percent of previous amount billed, (6) previous amount billed, (7) current percent completed, and (8) value of services completed to date.
- DEVELOPER's computerized summary of all costs, disbursements and activities for the most recent billing cycle.
- Any other information reasonably requested by COUNTY.

10.3 Within 30 days of receiving DEVELOPER's application for payment, COUNTY will notify DEVELOPER in writing of any objections to DEVELOPER's application for payment. Within 30 days of receiving an undisputed, properly completed application for payment, COUNTY shall pay to DEVELOPER a sum equal to the value of the work completed since the commencement of the work, less all previous payments. COUNTY shall not withhold retention. No progress payment by COUNTY shall be considered COUNTY's acceptance of any part of the SERVICES.

10.4 The compensation that COUNTY pays to DEVELOPER for the PHASE 2 SERVICES (if COUNTY elects to proceed with the PHASE 2 SERVICES) will be determined after completion of the PHASE 1 SERVICES, as the compensation for the PHASE 2 SERVICES will be dependent upon the GMP calculated during the PHASE 1 SERVICES.

10.5 Budget adjustments between task line items in Exhibit E may be made by DEVELOPER at DEVELOPER's sole discretion with notice to COUNTY, including the reduction of the allocated budget for a task in order to augment by this same amount the budget for any other task.

### **11. Laws to be Observed.**

11.1 DEVELOPER acknowledges that it is familiar with and, in accordance with the standard of care, shall observe and comply with all federal, state and local laws, ordinances and regulations in any manner affecting the conduct of the SERVICES.

11.2 Without limiting the foregoing, DEVELOPER must comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

### **12. Errors and Omissions.**

12.1 All SERVICES performed by DEVELOPER shall be complete and shall be reviewed prior to submission. DEVELOPER understands that COUNTY's review is discretionary, and DEVELOPER shall not assume that COUNTY will discover errors and/or omissions. If COUNTY discovers any errors or omissions prior to approving DEVELOPER's SERVICES, the SERVICES will be returned to DEVELOPER for correction. Should COUNTY or others discover errors or omissions in the work submitted by DEVELOPER after COUNTY's approval thereof, COUNTY's approval of DEVELOPER's SERVICES shall not be used as a defense by DEVELOPER.

12.2 DEVELOPER shall require its Consultants to purchase Professional Liability Insurance in accordance with the limits described in Section 13 (unless modified by Exhibit D or Exhibit E, as applicable).

### **13. Insurance.**

#### **13.1 General**

Prior to performing SERVICES under this AGREEMENT, DEVELOPER agrees to carry all required insurance and to deposit with the Chief Real Estate Officer Certificates of Insurance, including all endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this AGREEMENT have been complied with and to keep such insurance coverage and the certificates therefor on deposit with COUNTY during the entire term of this AGREEMENT. DEVELOPER agrees that DEVELOPER shall not perform any work under this AGREEMENT at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of the Chief Real Estate Officer. In no cases shall assurances by DEVELOPER, Architect, CMAR, or Consultants, including any insurance agent, be construed as adequate evidence of insurance. The Chief Real Estate Officer will only accept valid certificates of

insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. DEVELOPER's failure to provide the Chief Real Estate Officer with a valid certificate of insurance and endorsements, or binder at any time during the Term, shall constitute a material breach of this AGREEMENT. All subcontractors, Consultants/Contractors performing work on behalf of DEVELOPER pursuant to this AGREEMENT shall obtain insurance subject to the same terms and conditions as set forth herein for DEVELOPER, except to the extent that different insurance requirements are set forth in this Section 13. DEVELOPER shall not allow any subcontractor, Consultants/Contractors to work under this AGREEMENT if subcontractor, Consultants/Contractors have less than the level of coverage required by COUNTY under this AGREEMENT. It is the obligation of DEVELOPER to provide written notice of the insurance requirements to every subcontractor, Consultant/Contractor and to receive proof of insurance prior to allowing any subcontractor, Consultant/Contractor to perform work under this AGREEMENT. Such proof of insurance must be maintained by DEVELOPER through the entirety of the Term and be available for inspection by a COUNTY representative at any reasonable time.

#### 13.2 Self-Insured Retention (SIR)

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any SIR in excess of Fifty Thousand Dollars \$50,000 shall specifically be approved by County Executive Office/Office of Risk Management, or County designee ("**Risk Manager**"). The COUNTY reserves the right to require current audited or reviewed financial reports from DEVELOPER. If DEVELOPER is self-insured, DEVELOPER will indemnify the COUNTY for any and all claims resulting or arising from DEVELOPER's services in accordance with the indemnity provision stated in this AGREEMENT.

#### 13.3 Failure to Maintain Insurance

If DEVELOPER fails to maintain the required insurance for the full term of this AGREEMENT, then after notice and an opportunity to cure as provided in Section 7, COUNTY may terminate this AGREEMENT for cause. If, within ten (10) business days after such termination, DEVELOPER obtains and provides the Chief Real Estate Officer with evidence that the required insurance coverage has been procured, then this AGREEMENT may be reinstated at the sole discretion of COUNTY. DEVELOPER shall pay COUNTY Seven Hundred Fifty Dollars (\$750.00) for processing the reinstatement of this AGREEMENT.

#### 13.4 Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, CEO/Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

### 13.5 Insurance Limits

(a) The policy or policies of insurance maintained by **DEVELOPER** shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned or scheduled, non-owned and hired vehicles	\$1,000,000 combined single limit each accident
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per accident or disease
Professional Liability	\$2,000,000 per claims-made \$2,000,000 aggregate

(b) The policy or policies of insurance maintained by **Developer's CMAR** shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$5,000,000 per occurrence \$5,000,000 aggregate
Automobile Liability including coverage for owned or scheduled, non-owned and hired vehicles	\$1,000,000 combined single limit each accident
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per accident or disease
Professional Liability	\$2,000,000 per claims-made \$4,000,000 aggregate
Contractor's Pollution Liability	\$1,000,000 per claims-made or occurrence \$2,000,000 aggregate

(c) The policy or policies of insurance maintained by **Architect and Consultants** shall provide the minimum limits and coverage as set forth below:



<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned or scheduled, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per accident or disease
Professional Liability	\$1,000,000 per claims-made \$2,000,000 aggregate

(d) Limits of insurance may be met with umbrella/excess coverage provided the policy is written on a Follow Form basis.

#### 13.6 Required Coverage Forms

(a) The Commercial General Liability insurance policy shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

(b) The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

#### 13.7 Required Endorsements

(a) The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certification of Insurance:

(1) an Additional Insured endorsement using ISO form CG 2026 04 13 or a form at least as broad naming the County of Orange, and its elected and appointed officials, officers, employees, agents as Additional Insureds; Blanket coverage may also be provided which will state – ***As Required by Written Contract.***

(2) a primary non-contributing endorsement using ISO form CG 20 01 04 13 or a form at least as broad evidencing that DEVELOPER's insurance is primary and any insurance or self-insurance maintained by COUNTY shall be excess and non-contributing.

(b) The Contractor's Pollution Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- (1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, employees, and agents as Additional Insureds, or provide blanket coverage which shall state *As Required by Written Contract*.
- (2) A primary non-contributory endorsement evidencing that the Contractor's insurance is primary, and any insurance or self-insurance maintained by the County shall be excess and non-contributing.

(c) All insurance policies required by this AGREEMENT shall waive all rights of subrogation against COUNTY, and members of the Board of Supervisors, its elected and appointed officials, officers, and employees when acting within the scope of their appointment or employment. Blanket coverage may also be provided which will state- ***As Required by Written Contract***. However, DEVELOPER may submit written notice to Risk Manager requesting a waiver of, or revisions to, this endorsement requirement for subcontractors, Consultants/Contractors. Risk Manager, in its sole and absolute discretion, shall approve or reject such request by written notice to DEVELOPER. DEVELOPER shall provide Risk Manager with all requested information or documentation necessary to make such determination.

(d) The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against COUNTY, and members of the Board of Supervisors, its elected and appointed officials, officers, and employees. Blanket coverage may also be provided which will state- ***As Required by Written Contract***.

(e) DEVELOPER shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of this AGREEMENT, upon which COUNTY may suspend or terminate this AGREEMENT.

(f) If DEVELOPER's Professional Liability policy and/or Contractor's Pollution policy is/are a "claims made" policy, DEVELOPER shall agree to the following:

- 1) The retroactive date must be shown and must be before the AGREEMENT DATE or the beginning of the PHASE 1 SERVICES.
- 2) Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after expiration or earlier termination of this AGREEMENT.
- 3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the t

AGREEMENT DATE, DEVELOPER must purchase an extended reporting period for a minimum of three (3) years after expiration of earlier termination of this AGREEMENT.

(g) The Commercial General Liability policy shall contain a severability of interests clause, also known as a “separation of insureds” clause (standard in the ISO CG 001 policy).

(h) Insurance certificates and endorsements shall be forwarded to COUNTY at the address listed in Section 26.

(i) The procuring of such required policy or policies of insurance shall not be construed to limit DEVELOPER’s liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT, nor act in any way to reduce the policy coverage and limits available from the insurer.

#### **14. Indemnification.**

To the fullest extent permitted by law, DEVELOPER agrees to indemnify, defend, and hold COUNTY, its Board, its elected and appointed officials, officers, employees, consultants, contractors, counsel, successors and assigns, and those special districts and agencies which COUNTY’s Board of Supervisors acts as the governing board (“COUNTY Indemnitees”) harmless from any claims, demands or liability to the extent arising out of, pertaining to, or relating to (a) death or injury to people or damage or injury to property in connection with the performance of the PHASE 1 SERVICES; (b) the negligence, recklessness, or willful misconduct of DEVELOPER or anyone for whom DEVELOPER is liable; (c) any liability under workers' compensation acts, disability benefits acts, and other employee benefit acts (provided, however, the indemnity obligation hereunder shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable under such acts); or (d) any liability stemming from the wrongful performance of PHASE 1 SERVICES. Notwithstanding the foregoing, DEVELOPER is not obligated under this AGREEMENT to indemnify any COUNTY Indemnitees from any liability to the extent such liability is ultimately determined to be due to the active negligence, sole negligence, or willful misconduct of COUNTY Indemnitees. Notwithstanding the foregoing, to the extent that claims, demands or liability arising out of, pertaining to, or relating to design professional services, DEVELOPER has no obligation to indemnify, defend, or hold harmless the COUNTY Indemnitees except to the extent that the claims against the COUNTY Indemnitees arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional in accordance with Civil Code §2782.8. In such case, in no event shall the cost to defend charged to the design professional exceed the design professional’s proportionate percentage of fault. If judgment is entered against DEVELOPER and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of DEVELOPER and COUNTY or COUNTY Indemnitees, then DEVELOPER and COUNTY agree that liability will be apportioned as determined by the court. Neither PARTY shall request a jury apportionment.

Notwithstanding anything stated above, nothing contained herein shall relieve DEVELOPER of any insurance requirements or obligations created elsewhere in this AGREEMENT. DEVELOPER shall require indemnification of COUNTY in all of its contracts, including but limited to the Developer's CMAR and Architect and their subcontractors and subconsultants.

**15. Amendments.**

No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES; no oral understanding or agreement not incorporated herein shall be binding on either of the PARTIES; and no exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing.

**16. Successors and Assigns.**

The terms and provisions of this AGREEMENT shall be binding upon and inure to the benefit of the PARTIES hereto and their successors and assigns.

**17. Entirety.**

This AGREEMENT contains the entire agreement between the PARTIES with respect to the matters provided for herein.

**18. Severability.**

If any part of this AGREEMENT is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to the fullest extent reasonably possible.

**19. Binding Obligation.**

The PARTIES to this AGREEMENT represent and warrant that this AGREEMENT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity enforceable in accordance with its terms. The rights and executory obligations of the PARTIES under this AGREEMENT will survive the expiration or termination of this AGREEMENT.

**20. Governing Law and Venue.**

This AGREEMENT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this AGREEMENT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the PARTIES hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

## **21. Staffing.**

DEVELOPER will maintain an adequate number of competent and qualified persons, as reasonably determined by COUNTY, to ensure acceptable and timely completion of the scope of SERVICES described in this AGREEMENT throughout the period of those SERVICES.

## **22. Ownership of Documents.**

All work product (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file, and other related documents which are prepared by or for DEVELOPER specifically in the performance of this AGREEMENT (collectively referred to as "PROJECT DOCUMENTS") are to be and remain the property of the COUNTY and are to be delivered to the Chief Real Estate Officer or designee before the final payment is made to DEVELOPER; provided, however, that with respect to any architectural or engineering drawings and related specifications ("DESIGN DRAWINGS") prepared by DEVELOPER and its Consultants, the entity preparing such DESIGN DRAWINGS will retain ownership (including copyrights) to such DESIGN DRAWINGS and COUNTY is granted a perpetual, irrevocable, fully-paid, royalty-free, assignable license to the DESIGN DRAWINGS prepared under this AGREEMENT as reasonably required for COUNTY to make use of the DESIGN DRAWINGS for the sole purpose of completing the design, construction, remodeling, expansion and/or repair or remodeling of the PROJECT. DEVELOPER and its Consultants shall be owners of the copyrights in DESIGN DRAWINGS and COUNTY shall have the exclusive right to reproduce those DESIGN DRAWINGS as a whole, but DEVELOPER and its Consultants shall remain free to use the particular detailed drawings contained in them and other individual components of the DESIGN DRAWINGS on other projects. Nonetheless, if COUNTY re-uses, alters, modifies or adapts the PROJECT DOCUMENTS without the written consent of DEVELOPER for the specific purpose intended, such action will be at COUNTY's sole risk and without liability or legal exposure to DEVELOPER or its Consultants, and COUNTY agrees to indemnify, defend, and hold DEVELOPER and its Consultants harmless to the extent permitted by law, from all claims, damages, losses, and expenses arising out of and/or resulting from, or alleged to arise out of or result from, COUNTY's reuse, alteration, modification or adaptation of the PROJECT DOCUMENTS. DEVELOPER and its Consultants may retain a copy of all PROJECT DOCUMENTS.

## **23. Confidentiality.**

23.1 All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, and all written or other information submitted to DEVELOPER in connection with the performance of this AGREEMENT shall be held confidential by DEVELOPER and/or anyone acting under contract to DEVELOPER and shall not, without the prior consent of COUNTY, be used for any purposes other than the performance of the SERVICES, not be disclosed to any

person, partnership, company, corporation or agency, that is not connected with the performance of the SERVICES.

23.2 Nothing furnished to DEVELOPER which is generally known among cities or counties in Southern California shall be deemed confidential.

#### **24. Publication.**

24.1 No copies of sketches, schedules, written documents, computer-based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this AGREEMENT, are to be released by DEVELOPER and/or anyone acting under the supervision of DEVELOPER to any person, partnership, company, corporation, or agency, without prior approval by COUNTY, except as necessary for the performance of the SERVICES of this AGREEMENT. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after COUNTY's approval.

24.2 DEVELOPER agrees that it will not issue any news releases or make any contact with or respond to inquiries from the media in connection with either the award of this AGREEMENT or any subsequent amendment of, or effort under this AGREEMENT. DEVELOPER must first obtain review and approval of said media contact from COUNTY. Any requests for interviews or information received by the media shall be referred directly to COUNTY. DEVELOPER is not authorized to serve as a media spokesperson for COUNTY or the PROJECT without first obtaining consent from COUNTY.

#### **25. Records and Audit/Inspections.**

25.1 DEVELOPER shall keep an accurate record of costs incurred by DEVELOPER and/or Consultants employed by DEVELOPER in the performance of this AGREEMENT. DEVELOPER is not required to keep or provide detailed records for amounts identified as fixed amounts or lump sums (including, without limitation, insurance, DEVELOPER Fixed Overhead, and DEVELOPER Fixed Fee), and such amounts will not be subject to COUNTY's audit rights.

25.2 Within ten (10) days of COUNTY's written request, or sooner if ordered by a court of competent jurisdiction, DEVELOPER shall allow COUNTY or authorized State or Federal agencies or any duly authorized representative to have the right to access, examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time cards or other records relating to this AGREEMENT. At its option, COUNTY may from time to time, at its expense, cause the books, accounts, and financial information of DEVELOPER regarding the PROJECT to be audited by an independent auditor selected by COUNTY. DEVELOPER agrees to cooperate with such auditor and to make any of its books, accounts and financial information of DEVELOPER regarding the PROJECT available to such auditor. If an audit discloses a material discrepancy (*i.e.*, a discrepancy by more than five percent in the aggregate with respect to the expenses or fees billed by DEVELOPER), DEVELOPER shall reimburse COUNTY for the cost of the audit up to a cap

of \$50,000. Any adjustments in amounts due and owing by either PARTY to the other PARTY shall be promptly paid by the PARTY owing the amounts due.

25.3 DEVELOPER shall keep such material, including all pertinent cost accounting, financial records and proprietary data for a period of three (3) years after termination or completion of the AGREEMENT or until resolution of any claim or dispute between the PARTIES, whichever is later.

25.4 Should DEVELOPER cease to exist as a legal entity, records pertaining to this AGREEMENT shall be forwarded within a reasonable period of time not to exceed sixty (60) days to its successor in interest or surviving entity in a merger or acquisition, or, in the event of liquidation, to COUNTY.

## **26. Notices.**

26.1 Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the PARTIES' project managers' routine exchange of information and cooperation during the SERVICES.

26.2 Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt, or no greater than five (5) calendar days after being mailed by U. S. certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.

26.3 All communications shall be addressed to the appropriate PARTY at the address stated herein or such other address as the PARTIES hereto may designate by written notice from time to time in the manner aforesaid.

For DEVELOPER:

Griffin/Swinerton LLC  
1 Technology Drive, Building I, Suite 829  
Irvine, CA 92618  
Attn: Roger Torriero, Principal

For COUNTY:

County of Orange  
CEO Real Estate  
400 W. Civic Center Drive, 5th Floor  
Santa Ana, CA 92701  
Attn: Chief Real Estate Officer

### **27. Attorney's Fees.**

In any action or proceeding to enforce or interpret any provision of this AGREEMENT, or where any provision hereof is validly asserted as a defense, each PARTY shall bear its own attorney's fees, costs and expenses.

### **28. Interpretation.**

28.1 This AGREEMENT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this AGREEMENT.

28.2 In addition, each PARTY acknowledges that it has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite having the opportunity to do so.

28.3 Each PARTY further acknowledges that they have not been influenced to any extent whatsoever in executing this AGREEMENT by any other PARTY hereto or by any person representing them, or both.

28.4 Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this AGREEMENT against the PARTY that has drafted it is not applicable and is waived.

28.5 The provisions of this AGREEMENT shall be interpreted in a reasonable manner to affect the purpose of the PARTIES and this AGREEMENT.

### **29. Headings.**

The various headings and numbers herein, the grouping of provisions of this AGREEMENT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

### **30. Acceptance.**

Unless otherwise agreed to in writing by COUNTY acceptance shall not be deemed complete unless in writing and until all the SERVICES have actually been received, inspected, and tested to the satisfaction of COUNTY.

### **31. Consent to Breach not Waiver.**

31.1 No term or provision of this AGREEMENT shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the PARTY claimed to have waived or consented.

31.2 Any consent by any PARTY to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.



### **32. Remedies Not Exclusive.**

The remedies for breach set forth in this AGREEMENT are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this AGREEMENT does not preclude resort by either PARTY to any other remedies provided by law.

### **33. Independent Contractor.**

As referenced in Section 4 of this AGREEMENT, DEVELOPER shall be considered an independent contractor. Neither DEVELOPER, its employees nor anyone working under DEVELOPER shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.

### **34. Changes.**

DEVELOPER shall make no changes to the PROJECT or perform any additional work other than the SERVICES without COUNTY's specific written approval.

### **35. Assignment.**

The terms, covenants, and conditions contained herein shall apply to and bind the approved heirs, successors, executors, administrators and assigns of the PARTIES. Furthermore, neither the performance of this AGREEMENT nor any portion thereof may be assigned or sub-contracted by DEVELOPER, by any means whatsoever including but not limited to acquisition by merger, without the express written consent of COUNTY or as specifically permitted herein. Except as set forth herein, any attempt by DEVELOPER to assign or sub-contract the performance or any portion thereof of this AGREEMENT without the express written consent of COUNTY shall be invalid and shall constitute a breach of this AGREEMENT. As set forth hereinabove, COUNTY hereby consents to DEVELOPER subcontracting the architectural/engineering services to LPA Design Studios and pre-construction services to Swinerton Builders.

### **36. Public Records Act.**

Pursuant to the California Public Records Act ("CPRA"), Government Code Sections 6250 *et seq.*, all records provided by DEVELOPER to COUNTY are subject to public disclosure upon request except as otherwise provided by law. Prior to their submission to COUNTY, and within ten (10) days of receiving a Public Records Act Request, DEVELOPER shall identify any records it believes are exempt from disclosure, identify the applicable CPRA exemption, and mark or otherwise conspicuously identify those documents as CONFIDENTIAL. If the disclosure of such records is subsequently requested or determined by COUNTY to be required, COUNTY will notify DEVELOPER of such request or determination. Unless DEVELOPER obtains a protective order issued by a court restricting disclosure of the requested records, COUNTY may disclose the records if COUNTY determines that the Public Records Act requires disclosure. DEVELOPER

shall indemnify and defend COUNTY in any action to compel disclosure of such records that DEVELOPER has identified as exempt from CPRA and requested COUNTY not to disclose.

**37. Force Majeure.**

Neither PARTY shall be assessed with damages or unsatisfactory performance penalties during any delay beyond the time needed for the performance of this AGREEMENT caused by any act of God, fires, floods, earthquakes, other natural disasters, epidemic and pandemic related delays (including supply-chain issues), governmental embargo restrictions, nuclear incidents, war, civil disorder, employment strike, laws impacting the PHASE 1 SERVICES that are enacted after the AGREEMENT DATE or other cause beyond its reasonable control (collectively, “FORCE MAJEURE DELAYS”), during which said PARTY is unable to perform, provided said PARTY gives written notice of the cause of the delay to the other PARTY within seven (7) days of the start of the delay and avails itself of any commercially reasonable available remedies. The PROJECT schedule shall be adjusted to the extent of any impact caused by FORCE MAJEURE DELAYS.

**38. Calendar Days.**

Any reference to the word “day” or “days” herein means calendar day or calendar days, respectively, unless otherwise expressly provided.

**39. Compliance with Laws.**

DEVELOPER represents and agrees that, subject to the applicable standard of care, the PHASE 1 SERVICES shall comply with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively “laws”), including, but not limited to those issued by COUNTY in its governmental capacity and all other laws applicable to the SERVICES at the time SERVICES are provided to and accepted by COUNTY, in accordance with the standard of care.

**40. Authorization.**

Each signatory to this AGREEMENT represents that it is authorized to execute and cause the respective PARTY to be bound by this AGREEMENT.

**41. Availability of Funds.**

The obligation of COUNTY is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating COUNTY to expend or as involving COUNTY in any contract or other obligation for future payment of money in excess of appropriations authorized by law.

**42. Conflict of Interest DEVELOPER Personnel.**

42.1 DEVELOPER shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of COUNTY. This obligation

shall apply to DEVELOPER, DEVELOPER’s employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and SERVICES hereunder.

42.2 DEVELOPER’s efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from: making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of COUNTY.

**43. Title to Data.**

43.1 All materials, documents, data or information obtained from COUNTY data files or any COUNTY medium furnished to DEVELOPER in the performance of this AGREEMENT, will at all times remain the property of COUNTY. Such data or information may not be used or copied for direct or indirect use by DEVELOPER after completion or termination of this AGREEMENT without the express written consent of COUNTY.

43.2 All materials, documents, data or information, including copies furnished by COUNTY and loaned to DEVELOPER for its temporary use, must be returned to COUNTY at the end of this AGREEMENT unless otherwise specified by COUNTY.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT on the day and year first above written:

**COUNTY:**

**THE COUNTY OF ORANGE**, a political subdivision of the State of California

By: \_\_\_\_\_  
Chief Real Estate Officer

Per Minute Order dated \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

OFFICE OF COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By: \_\_\_\_\_  
Deputy

**DEVELOPER:**

**GRIFFIN/SWINERTON LLC**, a Delaware Limited Liability Company

By: \_\_\_\_\_  
Roger Torriero  
Its: Principal

Date: \_\_\_\_\_  
6/6/2024

By: \_\_\_\_\_  
Korin Crawford  
Its: Executive Vice President

Date: \_\_\_\_\_  
6/6/2024

**EXHIBIT A**

DESCRIPTION OF PROPERTY

[Attached]

**EXHIBIT A****LEGAL DESCRIPTION****MANCHESTER COMPLEX**

Facility No.: GA 1118

Parcel No.: 152

That certain portion of land in the City of Orange, County of Orange, State of California, over land described in Deed recorded November 21, 1912, in Book 150, Page 177 of Deeds, described in Grant Deed recorded July 9, 1965, in Book 7587, Page 794, described in Grant Deed recorded October 28, 1965, in Book 7719, Page 964, and described in Grant Deed recorded April 3, 2003 as Instrument No. 2003000369248, all to the County of Orange, all of Official Records in the Office of the County Recorder of said County, lying southerly and westerly of the following described line:

**COMMENCING** at the northerly terminus of that certain course on the centerline of The City Drive shown as "N00°41'08"E 149.545m" on Record of Survey 2003-1006 per map filed in Book 199, Pages 1 through 16 of Records of Survey in the office of the County Recorder of said Orange County;

thence leaving said centerline, perpendicular thereto, South 89°18'52" East, 60.00 feet to the easterly boundary line of The City Drive;

thence along said easterly line North 00°41'08" East, 45.00 feet to the beginning of a non-tangent curve, concave southerly and having a radius of 48.70 feet, a radial line to said beginning bears North 00°12'42" West, said beginning also being the **TRUE POINT OF BEGINNING**;

thence leaving said easterly line, Easterly 8.99 feet along said curve through a central angle of 10°34'48";

thence non-tangent to said curve North 06°51'07" East, 2.54 feet;

thence South 89°14'05" East, 41.26 feet;

thence South 00°50'13" West, 23.03 feet; thence South 88°04'51" East, 11.82 feet;

thence South 00°41'08" West, 24.62 feet; thence North 89°12'35" West, 6.32 feet; thence South 00°40'46" West, 138.89 feet; thence South 67°30'54" West, 1.16 feet to the beginning of a non-tangent curve, concave westerly and having a radius of 46.00 feet, a radial line to said beginning bears North 69°09'24" East;

thence Southerly 38.88 feet along said curve through a central angle of 48°25'44";

thence non-tangent to said curve South 89°16'48" East, 260.26 feet;

thence South 00°44'28" West, 170.65 feet;

thence South 78°06'57" East, 214.62 feet; thence South 24°25'19" West, 269.28 feet to its intersection with the northerly boundary line of Parcel 102321-1, as described in the Grant Deed to the ORANGE COUNTY TRANSPORTATION AUTHORITY recorded November 30, 2004 as

Document No. 2004001062820 of Official Records in the office of the County Recorder of said Orange County.

**TOGETHER WITH** land described as Parcel G.A. 1118-10.01 in Final Order of Condemnation, recorded January 25, 1966, in Book 7820, Page 506, described in Grant Deed to the County of Orange, recorded December 8, 1998, as Instrument No. 19980842737, and described in Grant Deed to the County of Orange recorded September 23, 2005, as Instrument No. 2005000755202, all of Official Records in said County Recorder’s Office.

**EXCEPT** that portion of land described in the Easement Deed to the City of Orange, recorded May 21, 1998 as Instrument No. 19980314756 of Official Records in said County Recorder’s Office.

**ALSO EXCEPT** that portion of land described in the Easement Deed to the City of Orange, recorded May 21, 1998 as Instrument No. 19980314757 of Official Records in said County Recorder’s Office.

Containing 4.604 Acres, more or less.

See EXHIBIT B attached and by reference made a part.

APPROVED

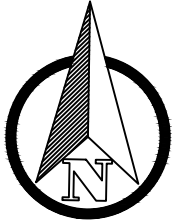
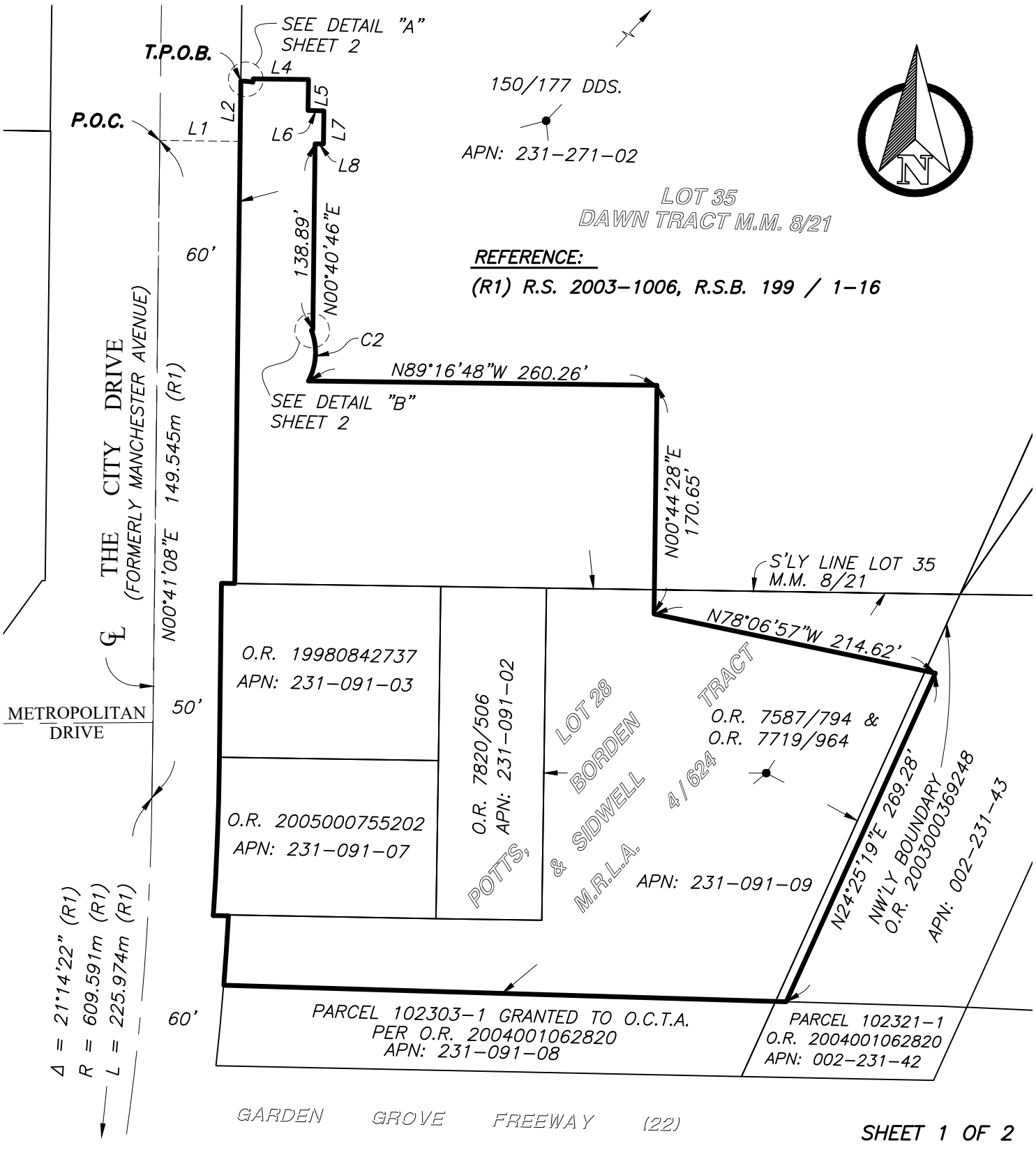
Lily M. N. Sandberg, Chief Deputy County Surveyor, L.S. 8402

  
By: Raymond J. Rivera, L.S. 8324

Date: 5/29/2024



**SKETCH TO ACCOMPANY LEGAL DESCRIPTION  
IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA**



SHEET 1 OF 2



**OC PUBLIC WORKS  
OC SURVEY**  
RIGHT-OF-WAY SERVICES

ROW ID NO. 2022-042  
SCALE: 1" = 100'

**EXHIBIT B**  
GA1118-152

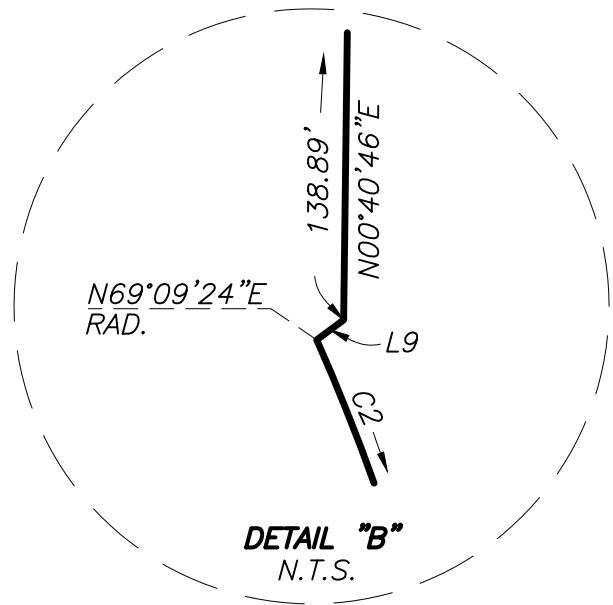
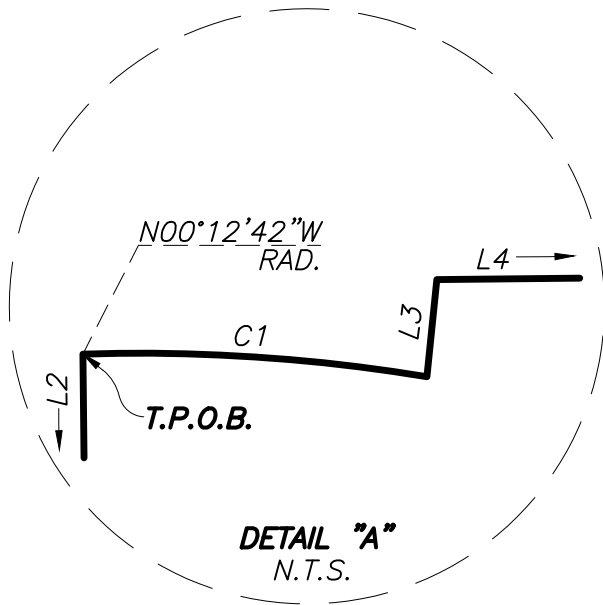
PROJECT: OLD ANIMAL SHELTER @ MANCHESTER COMPLEX

PREPARED BY:  
J.V.



**SKETCH TO ACCOMPANY LEGAL DESCRIPTION  
IN THE CITY OF ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA**

LINE / CURVE TABLE			
NO.	BEARING / DELTA	RADIUS	DIST / LENGTH
L1	N89°18'52"W		60.00'
L2	N00°41'08"E		45.00'
L3	N06°51'07"E		2.54'
L4	N89°14'05"W		41.26'
L5	N00°50'13"E		23.03'
L6	N88°04'51"W		11.82'
L7	N00°41'08"E		24.62'
L8	N89°12'35"W		6.32'
L9	N67°30'54"E		1.16'
C1	10°34'48"	48.70'	8.99'
C2	48°25'44"	46.00'	38.88'



SHEET 2 OF 2



**OC PUBLIC WORKS  
OC SURVEY**  
RIGHT-OF-WAY SERVICES

ROW ID NO. 2022-042

SCALE: 1" = 100'

**EXHIBIT B**

GA1118-152

PROJECT: OLD ANIMAL SHELTER @ MANCHESTER COMPLEX

PREPARED BY:  
J.V.

**EXHIBIT B**

DESCRIPTION OF PROJECT

[Attached]



## Exhibit B

### ORANGE COUNTY WORKFORCE REENTRY CENTER

#### Project Description

The County of Orange Workforce Reentry Center project is a new development that will establish a business-based program to work with selected individuals involved in the criminal justice system or other County systems of care. These individuals will be trained to develop, produce, and provide the goods and/or services to be delivered as a part of the business operation and for ultimate job placement within the community. The Workforce Reentry Center will serve a target population of post-custody, vocational-ready adults that are likely to succeed in a workforce reentry program on a voluntary basis. However, the Workforce Reentry Center will be available to any adult involved in the County's various systems of care.

The project will consist of the new construction of three buildings with associated surface lot parking and outdoor gathering areas. The buildings will be a two-story Vocational/Office Building of approximately 36,000 GSF, one-story Retail/Culinary Building of approximately 15,900 GSF, and two-story Housing Building with approximately 26,000 GSF and 54 beds dispersed among single occupancy, double occupancy, and quadruple occupancy residential units.

Public and Employee parking will be accessed from The City Drive South. The site is surrounded by State Route (SR) 22, the Santa Ana River, Theo Lacy Facility, and The City Drive South.

**EXHIBIT C**

**SCHEDULE FOR PHASE 1 SERVICES**

[Attached]

**EXHIBIT C**  
**ORANGE COUNTY WORKFORCE RE-ENTRY CENTER**  
**PHASE 1 PRE-DEVELOPMENT MILESTONE SCHEDULE**

	2024												2025											
<b>PHASE 1 - PREDEVELOPMENT</b>	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12
1. County BOS Approval of PDA/NTP																								
2. Schematic Design/Cost Estimate/Approvals																								
3. Design Development/GMP																								
4. County BOS approval of DA/GMP																								

**EXHIBIT D**

SCOPE OF PHASE 1 SERVICES

[Attached]

## EXHIBIT D – SCOPE OF SERVICES

### County of Orange – Workforce Re-entry Center, PDA Developer Scope of Services

June 6, 2024

#### 1. General Project Responsibilities of the Developer Throughout all Phases

- a. The intent is that completion of this Schematic Design and Design Development Scope of Services will culminate in the development of a Guaranteed Maximum Price (GMP) for inclusion in a future Development Agreement for further development and construction of the Project.
- b. Developer shall furnish, or cause to be furnished, all professional services, equipment, facilities, materials and labor necessary to perform in a complete, skillful and professional manner the Project Work as described herein within the time periods set forth in the Master Project Development Schedule attached hereto as **Exhibit C** and incorporated by this reference, as it may be adjusted pursuant to this Agreement.
- c. Developer, working in close cooperation with the County, shall provide Project leadership, management, direction, and general administration of the entire project team for the duration of the project. Developer shall work with the County to define project goals and shall be responsible to assure team alignment with Project goals at all times.
- d. Provide consultation and assistance to the County concerning all matters with respect to the Schematic and Design Development of the Project.
- e. Participate in periodic meetings with senior staff and elected officials as needed or requested to present periodic Project updates and assist in securing required approvals.
- f. Understand and implement the County's Project objectives and act in County's best interest at all times.
- g. Liaison and coordinate with County staff as directed.
- h. Chair and document all team meetings.
- i. Retain, manage, and administer the contracts of the entire AE project and consulting team and manage the entire design process.
- j. Create and regularly update the Master Project Development Schedule to identify and manage all phases of the Project including Preconstruction, Design, Permitting, Construction, Occupancy, Furnishing, Staff Relocations, Facility Training, and Close-Out.
- k. Create and regularly update the comprehensive Project Development Budget to include all aspects of total project costs including design, construction, geotechnical, environmental, testing and inspections, furnishings, utility connections, and administration costs.

#### 2. Not used

### 3. Schematic Design Phase

- a. Perform Constructability Reviews and Value Engineering
- b. Two design progress presentations to the County staff.

#### **Architectural Design and Engineering Services:**

- c. Agency consulting, review, and approval services including: Agency consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials, appearances on the County's behalf at agency meetings
- d. Geotechnical investigation and report
- e. Potholing and survey existing of underground utilities
- f. Prepare and submit Schematic Design Documents for the County's review and approval. Services and tasks will include:
  - i. Architectural Services responding to program requirements and consisting of preparation of:
    - ii. Building Shell and Core design
    - iii. Conceptual site, floor and roof plans.
    - iv. Conceptual security wall design and plans
    - v. Conceptual traffic signal design and related offsites
    - vi. Preliminary sections and elevations.
    - vii. Preliminary selection of building systems and materials.
    - viii. Perspective sketches.
  - ix. Interior Design Services consisting of space allocations and utilization plans based on functional relationships, and development of conceptual design solutions in order to establish:
    1. Space studies of maximum efficiency bay depths, mullion and columns spacing.
    2. Preliminary finish materials and color selections for shell and core components.
  - x. Electrical Engineering Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analyses, and development of conceptual design solutions for:
    1. Power service and distribution.
    2. Lighting Design.
    3. Special electrical systems.
    4. General space requirements.
    5. Fire detection and alarm requirements.
    6. Security requirements.
    7. Communication requirements.
    8. Emergency power system requirements.



- ix. Mechanical and Plumbing Engineering Services consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for:
  - 1. Heating, ventilating and air conditioning.
  - 2. Plumbing
  - 3. Fire protection (backbone).
  - 4. Special mechanical systems.
  - 5. General space requirements.
- x. Structural Engineering Services consisting of recommendations regarding basic structural materials and systems, analyses and development of conceptual design solutions for:
  - 1. A predetermined structural system.
  - 2. Preliminary foundation plan.
  - 3. Preliminary sketches and descriptions of structural work.
- xi. Civil Engineering Services consisting of development of conceptual design solutions for site components. Conceptual design solutions will be developed for the following:
  - 1. On-site utility exhibit.
  - 2. Fire department access
  - 3. Drainage systems concept.
  - 4. Conceptual Grading
  - 5. Storm water management requirements.
  - 6. Offsite improvements related to traffic signals.
- xii. Landscape Architecture services consisting of evaluating alternate materials, systems, equipment and development of conceptual design solutions for the following:
  - 1. Hardscape areas and materials.
  - 2. Plant palette and tree forms.
  - 3. Planting Plan.
- xiii. Independent building code consultant review
- xiv. Design of automated access control and video surveillance systems
- xv. Design of AV systems
- xvi. Dry utilities coordination
- xx. Interior Architecture including:
  - 1. Preliminary "Test Fits": Upon the County's approval of the Space Program Document, prepare a Preliminary Test Fit Plans and Interiors Schematic Design for County and user group review and approval. Services and tasks will include:
    - a. Attend a site visit to spot check readily visible conditions to confirm general accuracy of the as-built floor plans provided by the County, and Revit backgrounds prepared for the Project.

- b. Prepare one (1) Preliminary Test Fit Plan in accordance with the approved Space Program Document and the County's adjacency requirements for each building:
    - c. Revisions include: One minor revision to the Test Fit Plans to obtain County's and user group's approval.
  2. Preliminary Space Plans: Upon the County's approval of the Test Fit Plan Options, develop Preliminary Space Plans for the County's and user group's review and approval. Services and tasks will include the following for each building:
    - a. Develop Preliminary Space Plans, with conceptual furniture and equipment layouts, for the County's review and approval.
    - b. Include functional layouts for all Specialty Areas and Support Spaces.
    - c. Distribute Preliminary Space Plans to the County for review. Conduct two (2) review meetings to secure comments and approval of the Preliminary Space Plans.
    - d. Preliminary space Plan Revisions include: up to two minor revisions to the Preliminary Space Plans to obtain County's and user group's approval.
3. Interiors Schematic Design: Upon the County's approval of the Preliminary Space Plans, develop Interiors Schematic Design Documents for the County's and user group's review and approval. Services and tasks will include the following for each building:
  - a. Obtain completed Equipment Survey Forms from the user group, keyed to the approved Space Plan, and clarify any outstanding information.
  - b. Identify preliminary materials and finishes to confirm quality level for County and user group review and approval, based upon Project budget, goals and objectives. Materials will be presented in a loose format. Three (3) preliminary material palettes will be prepared.
  - c. Prepare preliminary Outline Specifications of tenant improvements including but not limited to; ceiling treatments, flooring treatments and materials, wall types, door and hardware types, interior glazing, millwork and casework, lighting fixtures, FF&E, interior signage and graphics, AV criteria, acoustical criteria, etc.

- d. Provide one Interiors Schematic Design Presentation with the County, to obtain comments and secure approval.
- e. Finalize the Interiors Schematic Design Documents to include County and Tenant comments.
- f. Interiors Schematic Design Revisions include: one minor revision to the Schematic Design Documents.

### **Construction Manager at Risk Services**

- a. Carefully examine the project sites and surrounding areas to become familiar and ascertain potential issues that will need to be addressed in the design.
- b. Prepare and issue a preliminary site logistics plan illustrating construction project ingress and egress, staging, haul routes, management office location, etc.
- c. Prepare an estimate of construction costs based on the Schematic Design Documents. Prepare detailed estimates of all major portions of the work, and obtain estimates from key trade subcontractors, analyze the differences, and make appropriate adjustments before finalizing the estimate.
- d. Provide a Value Analysis report based on the issued Schematic Design Documents. Include suggestions for alternative building systems where appropriate. Alternatives to include opinions regarding impact on project cost, schedule, quality, and operability.
- e. Develop a summary level construction schedule to complement the Schematic Level construction estimate.
- f. Deliverables at completion of Schematic Design phase
  - i. One approved Schematic Design documents package including:
  - ii. Approved Space Program and Executive Summary Visioning Document.
  - iii. One set of approved Preliminary Interior Test Fit Plans.
  - iv. One set of approved Space Plans.
  - v. One approved Interiors Schematic Design Document set for each building.
  - vi. Preliminary site logistics plan
  - vii. Summary level construction schedule
  - viii. Schematic Design level construction cost estimate
  - ix. Value Analysis report
  - x. Updated Master Development Schedule
  - xi. Updated Master Development Budget

### **4. Design Development Phase**

- a. Perform Constructability Reviews and Value Engineering
- b. Two design progress presentations to County staff.

**Architectural Design and Engineering Services:**

- c. Agency consulting, review, and approval services, including: Agency consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials, appearances on the County's behalf at agency meetings
- d. Based on the County's approval of the Schematic Design Documents, and on the County's authorization of any adjustments in the Project requirements, schedule, and the budget for the cost of the work, Developer shall prepare Design Development Documents for the County's approval. The Design Development Documents shall illustrate the further development of the approved Schematic Design Documents.
- e. Architectural Services consisting of continued development and expansion of Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the Project through:
  - i. Plans, sections and exterior elevations.
  - ii. Typical construction details.
  - iii. Final materials selections.
  - iv. Equipment layouts.
  - v. Outline Specifications.
  - vi. Interior Design Services to establish the following components:
    - 1. Interior construction of the Project.
    - 2. Special interior design features.
    - 3. Final finish materials and color selections.
  - vii. Electrical Engineering Services consisting of further development of Electrical Schematic Design Documents and development of materials list to establish:
    - 1. Criteria for exterior and interior lighting and electrical systems for Architectural components.
    - 2. Approximate sizes and capacities of major components, and basic equipment information.
    - 3. Provide preliminary analysis of the building design for compliance with Energy Conservation Standards.
    - 4. Provide outline specifications and keynotes in Engineer's standard format and level of detail.
    - 5. Preliminary equipment and lighting layouts.
    - 6. Required space for equipment.
  - viii. Mechanical and Plumbing Engineering Services consisting of continued development and expansion of Schematic Design Documents and development of Outline Specifications or materials lists to establish:
    - 1. Approximate sizes and capacities of major components and basic equipment information.
    - 2. Provide outline specifications and keynotes in Engineer's standard format and level of detail.

3. Preliminary equipment layouts.
  4. Required space for equipment.
  5. Acoustical and vibration control requirements.
  6. Visual impacts.
  7. Energy conservation measures.
- ix. Structural Engineering Services consisting of continued development of the basic structural system and Tenant specific requirements and Schematic Design Documents in sufficient details to establish:
1. Final structural design criteria.
  2. Foundation and framing sizes.
  3. Lateral load resisting system.
  4. Critical coordination clearances.
  5. Outline Specifications of materials lists.
- x. Civil Engineering Services consisting of preliminary utility layout and storm water management concepts. Continued development and expansion of Schematic Design Documents and development of Outline Specifications or materials lists to establish the final scope and preliminary details for the specified areas.
- xi. Landscape Architecture Services consist of the development of Landscape Design Documents and development of materials lists to establish final scope and preliminary details for landscape work, through the preparation of the following exhibits:
1. Hardscape Plan.
  2. Typical Construction Details.
  3. Applicable Elevations.
  4. Planting Plans and Details.
- xii. Independent building code consultant review
- xiii. Virtual model and renderings
- xiv. Independent roofing and waterproofing consultant
- xv. Design of automated access control and video surveillance systems
- xvi. Design of AV systems
- xvii. Dry utilities coordination
- xx. Outline Specifications
- xxi. Provide two Design Development Presentations including final materials, finishes, sketches, elevations and plans for all disciplines noted, and all aspects of the project.
- xxii. Upon approval of the Design Development, Documents prepare two sets of color, material and design presentation boards for the County and Tenant's use.
- xxiii. Revisions include: One revision to the Design Development Documents.

- f. Interiors Design Development: Prepare Interiors Design Development Documents for the County's review and approval based on the approved Interiors Schematic Design documents and Preliminary Construction Cost Estimate. The documentation will define the final intent of the design and will illustrate all essential components.
- i. Develop interior Architectural elements, components and spaces including but not limited to; lighting concepts, ceiling and wall treatments and custom millwork.
  - ii. Develop final color palette for all materials, finishes and fixtures based upon the approved material palette developed in the prior phase of work.
  - iv. Provide partial reflected ceiling plans of key design features, and elevations of key Architectural elements.
  - iv. Further develop floor and finish plans to incorporate all design elements.
  - v. Provide two Interiors Design Development Presentations including final materials, finishes, sketches, elevations and plans.
  - vii. Finalize the Interiors Design Development Documents, keynoting and outlining the following information:
    1. Wall types, doors, and glazing.
    2. Sound insulation requirements.
    3. Telephone data and electrical requirements.
    4. Special lighting and HVAC requirements.
    5. Special ceiling, wall and floor treatments.
    6. AV requirements.
    7. Acoustical requirements.
    8. Interior signage and graphics.
    9. Finishes and materials.
    10. Keynotes to describe key design features.
    11. Keynoted outline sheet specifications.
    12. Obtain the County's and user group's approval
13. Two (2) Interiors Design Presentations

### **Construction Manager at Risk Services**

- a. Prepare and issue a detailed site logistics plan illustrating construction project ingress and egress, staging, haul routes, management office location, etc.
- b. Provide a Value Analysis report based on the issued Design Development Documents. Include suggestions for alternative building systems and materials where appropriate. Alternatives to include opinions regarding impact on project cost, schedule, quality, and operability.
- c. Prepare based on the completed Design Development documents a Guaranteed Maximum Price (GMP).
- d. Develop a detailed construction schedule to complement the GMP.

**Deliverables at completion of Design Development phase:**

One approved Design Development package including:

1. One approved Interiors Design Development Document set for each building.
2. Detailed site logistics plan
3. Detailed construction schedule
4. GMP for construction
5. Value Analysis report
6. Updated Master Development Schedule
7. Updated Master Development Budget

**5. Development of Guaranteed Maximum Price (GMP)**

Developer will assemble the documentation listed in section 4.d herein and prepare them as necessary to serve as exhibits to a proposed Development Agreement for development and construction of the project.

Developer, in cooperation with County Counsel and senior staff, will prepare a complete Agreement for Development and Construction of the Project. The Agreement will include a detailed plan for procurement of all construction services in accordance with the Public Contract Code.

**6. County Responsibilities**

- a. County shall provide in timely manner full information regarding its requirements for the Project.
- b. Reviews
  - i. The Designated County Representative shall review or cause to be reviewed on behalf of County all reports, plans, and recommendations produced by Developer, and render, in accordance with the Project Schedule, all decisions requested by Developer, which may be necessary to perform the Project Work in accordance with the Project Schedule.
  - ii. All decisions rendered by the Designated County Representative shall be binding upon County. Furthermore, it is expressly understood that all County communication to Developer or any of its Consultants or their employees shall be issued solely by the Designated County Representative and delivered exclusively to Developer. All communications from Developer or any of its Consultants or their employees to County shall be issued solely by Developer and delivered exclusively to the Designated County Representative.
- c. Deliverables
  - i. County shall deliver in accordance with the Project Schedule all existing and available record documents pertaining to the property and improvements that are envisioned to be redeveloped. This will include but not necessarily be limited to:

1. Record documents for all underground utility services including electrical power, communications, natural gas, sewer, and water for the entire project site. and all adjacent offsite areas.
- d. The County hereby designates County Chief Real Estate Officer or their designee (the "County's Representative"), to be its designated representative for purposes of contact between the County and Developer in connection with the design Project, including, without limitation, the giving of consents and approvals. The County may at any time, by notice given to Developer, remove the County's Representative and appoint another individual to act as the County's Representative. Except as set forth in this Agreement to the contrary, the County's Representative shall have the authority to bind the County with respect to all matters for which the consent or approval of the County is required or permitted pursuant to this Agreement and all consents, approvals and waivers given by the County's Representative shall bind the County and may be relied upon by Developer.
  - e. The County shall cooperate with Developer for the design Project and shall promptly and in a timely manner (a) provide information regarding its requirements for the Project, (b) answer inquiries Developer may have with respect to such information, and (c) timely approve or disapprove (in accordance with the terms of this Agreement) any items or issues.
  - f. The County shall keep Developer promptly informed of all material matters which come to the County's attention relating to or affecting the Project relevant to the Developer Services, including, without limitation, all agreements and discussions between the County and third parties relating to such matters, and the County shall promptly notify Developer of any developments necessitating or warranting a change in the Project.

## **7. Exclusions and Qualifications**

- a. Phase 1 Environmental Assessment
- b. Phase 2 Environmental Assessment
- c. Survey - ALTA, topo, boundary, parcel map, etc.
- d. Design of off-site areas, areas outside of the property line, city sidewalks, and areas within the public Right of Way are not included, other than design/civil engineering of offsite improvements related to traffic signal.
- e. LEED Documentation and Commissioning.
- f. Design of high-density file systems or movable partitions.
- g. Design of mock-ups of furniture, fixtures and/or construction items.
- h. Design of high-level video conference facilities.
- i. Provide services of additional professional consultants including but not limited to the following that may be required for this project:
  - a. Site Surveys.
  - b. Traffic/Parking.



- c. Transportation.
- j. Assistance to the County in obtaining record drawings for the property.
- k. Revisions to Schematic Design or Design Development documents due to unforeseen field conditions, or by the actions of others.
- l. Energy Studies services consisting of analyses of mechanical systems, fuel costs, on-site energy generation and energy conservation options for the County's consideration.
- m. Easements: The abandonment, revising, or writing of easements is not included in this Scope of Services.
- n. Mapping (Lot Line adjustments and Parcel Maps).
- o. Offsite utility line relocation or adjustments.
- p. Encroachment Plans.
- q. Relocation or undergrounding of power lines.
- r. Hazardous materials studies.
- s. Conditional Use Permit.
- t. Utility incentive programs.
- u. Improvements to adjacent city streets.

**EXHIBIT E**

**BUDGET AND FEES FOR PHASE 1 SERVICES**

[Attached]

**EXHIBIT E**  
**OC WORKFORCE RE-ENTRY - BUDGET AND FEES FOR PHASE 1 PREDEVELOPMENT AGREEMENT**

6-Jun-24

COMPONENT	FACTOR	Pre-development Phase	COMMENTS
<b>1 NEEDS ASSESSMENT AND RELATED A/E SERVICES</b>			
AE Basic Fee		\$2,020,800	Lump Sum fixed LPA (includes accelerated package for early permits) See Qualification 1
LEED Documentation		\$0	Excluded
Potholing plan		\$10,000	Allowance
Graphics support for CEQA documentation		\$15,000	Allowance
Survey - Base map and ALTA survey, and updated title reports		\$0	NIC - By County
Workforce and reentry Needs Assessment and Master Planning		\$0	Excluded
Reimbursables for all of the above	2.50%	\$50,520	Allowance Percentage of AE basic fee See Qualification 2 below
Renderings and models		\$0	NIC
Traffic signal design and related civil engineering		\$100,000	Allowance
<b>2 MISC CONSULTANTS</b>			
Structural peer review	0.50%	\$10,104	Allowance Percentage of AE basic fee
Commissioning, Enhanced Commissioning, and MEP peer review	1.50%	\$30,312	Allowance Percentage of AE basic fee
Security systems design (CCTV, access control, intrusion)		\$0	In AE basic fee
Roofing and waterproofing peer review	0.50%	\$10,104	Allowance Percentage of AE basic fee
Dry utility coordination (telco, cable, ISP)		\$20,000	Allowance
ADA peer review	1.00%	\$20,208	Allowance Percentage of AE basic fee
Field revisions allowance	2.00%	\$40,416	Allowance Percentage of AE basic fee
Phase I Environmental Site Assessment (ESA)		\$0	NIC - By County
<b>3 GEOTECHNICAL SERVICES</b>			
Complete site investigation and report		\$40,000	Allowance
<b>4 CONSTRUCTION SERVICES</b>			
Precon Consulting		\$400,000	Lump Sum Fixed Swinerton Builders See Qualification 3
<b>5 MISC OWNER COSTS</b>			
Builders Risk insurance		\$0	Excluded
County Contingency		\$0	NIC - County option
<b>6 DEVELOPMENT AND PROJECT MANAGEMENT</b>			
Legal		\$50,000	Allowance
Reimbursables		\$10,000	Allowance See Qualification 4 below
Developer Fixed Overhead	2%	\$680,736	Lump sum fixed See Qualification 5 below
Developer Contingency	10.00%	\$350,820	Percentage of all costs above
Developer Fixed Fee	4%	\$1,461,253	Lump sum fixed See Qualification 6 below
Insurance	1.10%	\$58,523	Percentage of actual costs as incurred
<b>TOTAL</b>		<b>\$ 5,378,794</b>	

**This budget is based on the following design documents:**

- 0520 WRC Conceptual Drawings
- 240520 WRC Conceptual BOD
- 0520 WRC Conceptual Program
- 0520 WRC Conceptual Project Description
- 2024.05.24 Updated Elevations
- 24 0410 WRC PV+ Battery Storage Calcs

**This budget excludes the following costs and conditions:**

- PDA Phase:
1. Any work associated with haz mat investigation
  2. Design of underpinning of existing buildings (assumed not required)
  3. Fitness equipment design
  4. Offsite design other than items shown on the above-listed design documents
  5. Testing, air monitoring or reports associated with hazmat abatement
  6. Survey and mapping
  7. Any design related to relocating Verizon Cell Tower
  8. Artwork
  9. Submittal and coordination with CalTrans, Army Corps of Engineers, County Flood Control, or any agency other than city/county.
  10. Services related to annexation of parcel into City, property or ROW acquisitions.
  11. Environmental impact studies as may be required for CEQA compliance.

**Qualifications**

1. Lump sum fixed. Will be billed monthly based on percentage completion.
2. LPA reimbursables allowance is to cover incidental expenses, which include but are not necessarily limited to: Printing, shipping and mailing, transportation, and parking.
3. Lump sum fixed. Will be billed at completion of PDA phase
4. G/S reimbursables allowance is to cover incidental expenses (if any) that may be required but not otherwise covered in Overhead and Fee, which include but are not necessarily limited to: Out of area travel expenses, permit fees, licenses, etc.
5. Developer Lump Sum Fixed Overhead is Developer's direct and indirect personnel and administrative costs. Basis for calculation of total overhead is 2% of total project costs (PDA and estimated DA phase), allocated monthly over PDA and estimated DA phase, but with the amount shown above paid and earned ratably in equal monthly fixed increments over the duration of the PDA phase.
6. Developer Lump Sum Fixed Fee is Developer's gross profit. Basis for calculation of total fee is 4% of total project costs (PDA and estimated DA phase), allocated monthly over PDA and estimated DA phase, but with the amount shown above paid and earned ratably in equal monthly fixed increments over the duration of the PDA phase.

**EXHIBIT F**

PRELIMINARY BUILDING PROGRAM

[Attached]

**EXHIBIT F**

ORANGE COUNTY WORKFORCE REENTRY CENTER  
 PRELIMINARY BUILDING PROGRAM  
 (MAY BE SUBJECT TO MODIFICATION)

Operations Staff		Staff		Space		Required		Notes
		On-Site	hybrid	code	Sq.Ft.	Qty	Sq.Ft.	
<b>Offices</b>								
	Private Office - C			Private Office - C	120	17	2,040	
	Private Office - B			Private Office - B	180	5	900	
<b>Other Rooms and Areas</b>								
	Computer Lab			Allow	900	1	900	
	Multi-Purpose			Allow	3,200	1	3,200	Divisible into 2 smaller room, provide counter space for kitchen/galley area, open into training room for larger space for special events
	Multi-Purpose Storage/AV			Allow	200	2	400	Allow for Space accessible from each smaller room when room is divided
	Conference Room - D			Allow	450	2	900	
	Conference Room - A			Allow	240	2	480	
	Open Office			Workstation	64	43	2,752	
	Open Office			Benching	28	36	1,008	
	Food Pantry			Allow	500	1	500	
	Interview			Allow	100	2	200	
	Quiet Room			Allow	230	2	460	
	Copy/Mail			Allow	300	1	300	
	Copy (level-2)			Allow	150	1	150	
	Storage			Allow	270	2	540	
	Electrical			Allow	220	1	220	
	Fire Riser			Allow	40	1	40	
	Clothing Closet			Allow	150	1	150	
	Fitting Room			Allow	60	2	120	
<b>Shared</b>								
	Lobby			Allow	800	1	800	Waiting area, reception space for two staff members
	Staff Breakroom / Kitchenette			Allow	630	1	630	
	Staff Restroom			Allow	400	1	400	
	Lockers			Allow	8	4	32	Day porter, Janitor, Engineer half height (8 total)
	<b>Subtotal usable sf / staff</b>						<b>17,122</b>	
	Unit Circulation			Circulation	35%		5,993	Circulation/wall thickness/misc areas
	<b>Total Net</b>						<b>23,115</b>	

Notes:

ORANGE COUNTY WORKFORCE REENTRY CENTER  
 PRELIMINARY BUILDING PROGRAM  
 (MAY BE SUBJECT TO MODIFICATION)

Vocational (Trade Pre-Apprenticeship)	Staff		Space		Required		Notes
	On-Site	hybrid	code	Sq.Ft.	Qty	Sq.Ft.	
<b>Trade Pre-Apprenticeship</b>							
Classrooms			Allow	900	3	2,700	
Vocational Training Warehouse			Allow	2,800	1	2,800	Pre-Apprenticeship Construction Skills, Warehouse Skills
Storage			Allow	200	1	200	
Break Room / Kitchenette			Allow	430	1	430	For Trainee
Material Storage			Allow	250	1	250	
Tool Storage			Allow	250	1	250	
lockers (staff)			Allow	8	4	32	12" wide full height lockers
lockers (trainee)			Allow	8	50	400	12" wide half height lockers, 100 total
Subtotal usable sf / staff						<b>7,062</b>	
Unit Circulation			Circulation	35%		2,472	
<b>Total Net</b>	<b>0</b>	<b>0</b>				<b>9,534</b>	

Notes:

ORANGE COUNTY WORKFORCE REENTRY CENTER  
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Public Facing		Staff		Space		Required		Notes
		On-Site	hybrid	code	square feet	Qty	Sq.Ft.	
	<b>Commercial</b>							
	Café - Grab & Go			Allow	2,000	1	2,000	Seating for 48
	Retail Space 1			Allow	1,500	1	1,500	
	Retail Space 2			Allow	1,500	1	1,500	
	Retail Space 3			Allow	1,500	1	1,500	
	Subtotal usable sf / staff						<b>6,500</b>	
	Unit Circulation			Circulation	35%		2,275	
	<b>Total Net</b>	<b>0</b>	<b>0</b>				<b>8,775</b>	

Notes:

ORANGE COUNTY WORKFORCE REENTRY CENTER  
 PRELIMINARY BUILDING PROGRAM  
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Vocational (Culinary)		Staff		Space		Required		Notes
		On-Site	hybrid	code	Sq.Ft.	Qty	Sq.Ft.	
<b>Culinary</b>								
	Bakery Kitchen			Allow	1,100	1	1,100	Space for 25-30 trainees
	Basic Skills Kitchen			Allow	1,100	1	1,100	Space for 25-30 trainees
	Production Kitchen			Allow	1,500	1	1,500	Near Café/Serves Café, Space for 25-30 trainees
	Demonstration Kitchen/Classroom			Allow	1,100	1	1,100	Up to 36 trainees
	Pantry			Allow	100	1	100	
	Dry Storage			Allow	150	1	150	
	Refrigerator / Freezer			Allow	200	1	200	Walk-in refrigerator / freezer
<b>Other Rooms and Areas</b>								
	Open Office	4		Allow	350	1	350	4 workstations
	Break Room / Kitchenette			Allow	500	1	500	For Trainee
	lockers (staff)			Allow	8	4	32	12" wide full height lockers
	lockers (trainee)			Allow	8	20	160	12" wide half height lockers, 40 total
	Laundry			Allow	100	1	100	
	Subtotal usable sf / staff						<b>6,392</b>	
	Unit Circulation			Circulation	35%		2,237	
	<b>Total Net</b>	<b>4</b>	<b>0</b>				<b>8,629</b>	

Notes:



ORANGE COUNTY WORKFORCE REENTRY CENTER  
 PRELIMINARY BUILDING PROGRAM  
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Housing	Staff		Space		Required		Notes
	On-Site	hybrid	code	Sq.Ft.	Qty	Sq.Ft.	
<b>Housing Staff</b>							
Manager Office			Private Office - C	120	1	120	
Office			Private Office - C	120	1	120	
Conference			Allow	350	1	350	
Therapy/Counseling			Allow	170	2	340	
Waiting			Allow	350	1	350	
Exam Large			Allow	150	1	150	
Exam Small			Allow	70	2	140	
Showers for Guests			Allow	50	1	50	
Janitor			Allow	50	1	50	
Storage			Allow	350	1	350	
<b>Apartment</b>							
Manager			Allow	350	3	1,050	2 beds
Single Occ Room			Allow	350	18	6,300	18 beds
Double OCC Room			Allow	350	11	3,850	22 beds
Quadruple OCC Room			Allow	700	3	2,100	12 beds
<b>Shared</b>							
Lobby			Allow	600	1	600	
Cafeteria			Allow	1,000	1	1,000	
Kitchen			Allow	350	1	350	
Laundry			Allow	350	1	350	
Common Room			Allow	1,000	1	1,000	
Electrical			Allow	225	1	225	
Hot Box			Allow	110	1	110	
Trash			Allow	330	1	330	
<b>Subtotal usable sf / staff</b>						<b>17,615</b>	
<b>Unit Circulation</b>			Circulation	35%		6,165	Circulation/wall thickness/misc areas
<b>Total Net</b>						<b>23,780</b>	

Notes:

ORANGE COUNTY WORKFORCE REENTRY CENTER  
 PRELIMINARY BUILDING PROGRAM  
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Site Components		Staff		Space		Required		Notes
		On-Site	hybrid	code	Sq.Ft.	Qty	Sq.Ft.	
<b>Site Program Components</b>								
	Pet Area / Relief Area			Allow	1,000	1	1,000	kennel space, small grooming area (1-2 bathig troughs), small work area
	Garden			Allow	32	20	640	
	Activity Area			Allow	5,000	1	5,000	
	Trash Enclosure			Allow	600	1	600	
	Subtotal usable sf / staff						<b>7,240</b>	
	Site circulation			Circulation	35%		<b>2,534</b>	Vehicular/Pedestrian circulation
	<b>Total Net</b>	<b>0</b>	<b>0</b>				<b>9,774</b>	

Notes: