

**County of Orange, OC Public Works  
Kasa Construction Inc.****MA-012-24011000****CONTRACT**

## Crawford Canyon Park and Sidewalk Extension

This Agreement is made and entered into the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the County of Orange, a political subdivision of the State of California (“County”), and Kasa Construction Inc. (“Contractor”).

County and Contractor agree as follows:

**1. CONTRACT DOCUMENTS**

Contract Documents, which together comprise the complete agreement between County and Contractor, consist of the following: the Bid; this Contract; the General Conditions; Supplementary General Conditions; the Non-collusion Declaration; Special Provisions; Addenda and Bulletins; Attachments; Appendices; Plans; Standard Plans; Standard Specifications; all Reference Specifications mentioned in any Contract Documents; and all modifications and amendments to the foregoing issued after the date of execution of the Agreement, including Amendments and Change Orders. The Contract Documents also include the Faithful Performance Bond and the Labor and Material Payment Bond unless such bonds are expressly not required for this Project by the Supplementary General Conditions or Special Provisions. The Contract Documents are complementary, and what is called for by anyone shall be as binding as if called for by all.

**2. SCOPE OF WORK**

Contractor shall perform all work as required by, and in strict accordance with, the Contract Documents (the “Project”), which consists of in general, of clearing and grubbing, demolition, grading including import soil material, retaining wall, construction of an entrance drive and off-street parking lot for approximately 9 standard spaces and 2 accessible spaces; 2- to 5-year-old playground; 5- to 12-year-old playground; hill slide; exercise stations; concrete walkways; Disintegrated Granite paths and access road; wood pedestrian bridges; picnic tables; benches; waste/recycle receptacles; bike racks; site lighting, electrical, domestic water improvements, irrigation and landscape; ADA curb ramp construction; asphalt pavement construction and resurfacing; tree removal; catch basin and storm drain pipe construction; traffic signal equipment upgrade; signing and striping; guardrail removal and construction; and fence construction. Other items of work or details not mentioned above that are required by the Plans, 2021 Greenbook STANDARD SPECIFICATIONS, or these Special Provisions, shall be performed, placed, constructed or installed.

**3. CONTRACT PRICE AND TIME****3.1. CONTRACT PRICE**

County shall pay Contractor for all work required by the Contract Documents the Contract Price of **Five Million, Seven Hundred Eighty-Seven Thousand, Six Hundred and Twenty-One Dollars (\$5,787,621)**, as it may be adjusted pursuant to the “CHANGES” Section of the General Conditions, and in accordance with the “PAYMENTS” Section of the General Conditions.

**3.2. CONTRACT TIME**

Within 10 calendar days of the Board of Supervisors’ award of the Contract, Contractor shall submit to County for its review: acceptable bonds; proof of insurance; initial job progress schedule; and any additional documentation required prior to execution of this Contract by the Contract Documents, Supplementary General Conditions or Special Provisions. If County rejects the submitted documents, Contractor will have 5 additional calendar days to resubmit. If Contractor fails to submit documents within the required time(s), the Contract Time (as defined below) will be reduced by the number of days which exceed the time for submittal. If Contractor fails to submit acceptable documents by the second submission, County may, at its sole discretion, proceed to award the Contract to the next lowest responsive, responsible bidder or reduce

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the Contract Time by the number of days between County's rejection of the second submission and County's approval of the documents.

Upon County's approval of the bonds, insurance, initial job progress schedule, and any other required submitted documents, County will deliver to Contractor a signed copy of the Agreement and a Notice to Proceed with the work. Contractor shall not commence construction until County issues the Notice to Proceed. Contractor shall complete all work required by the Contract Documents within three hundred and twenty (320) calendar days of the effective date of the Notice to Proceed ("Contract Time"). The Contract Time includes thirty (30) of anticipated weather days necessitating stoppage of work, and a time extension due to rain or other adverse weather conditions will only be granted in accordance with the "DELAYS DUE TO WEATHER AND FORCE MAJEURE" Section of the General Conditions.

**4. BONDS**

Within ten (10) calendar days after award of the Contract, the successful Contractor shall furnish a Faithful Performance Bond and a Labor and Material Payment Bond, each in an amount equal to 100% of the Contract Price and issued by a surety in accordance with the requirements of the General Conditions of the Contract. The bonds shall be in the form of the models included in the Invitation for Bid Documents and must be approved by County's Risk Manager and County Counsel. The successfully Contractor shall submit the bonds with original signatures. The signature of the surety representative must be notarized.

**5. LIQUIDATED DAMAGES**

In accordance with Government Code Section 53069.85, Contractor agrees to forfeit and pay to County the sum of **\$3,500.00** per day ("Liquidated Damages") for each calendar day that completion of all the work required by the Contract Documents is delayed beyond the Contract Time, as may be adjusted by Change Order. County may deduct such sum from any payments due or to become due to Contractor. If the Liquidated Damages exceed the unpaid balance of the Contract Price otherwise owed to Contractor, then Contractor shall immediately pay County the difference.

**6. CONTRACTOR SHALL PERFORM (51 PERCENT) OR MORE OF THE WORK**

Contractor shall be capable of performing, and shall perform with its own organization, work amounting to at least **51 percent** of the Base Bid Amount. However, any Bid Item designated as a Specialty Bid Item will be excluded from the Base Bid Amount for purposes of this Section only.

**7. EMPLOYEE ELIGIBILITY VERIFICATION**

Contractor hereby certifies that it complies with all applicable laws and regulations regarding the eligibility of its employees to work in the United States, and that all of its employees performing work under this Contract meet all citizenship or immigration status requirements to do so. Contractor shall obtain all documentation necessary to verify the employment eligibility status of covered employees as described by U.S. Citizenship and Immigration Services Form I-9. Contractor shall retain such documentation for the period prescribed by law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless the County, its agents, officers, and employees from any sanctions or liability that may be assessed in connection with any alleged violation of federal or State laws or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

**8. SECURING WORKERS' COMPENSATION INSURANCE CERTIFICATION**

Contractor, by executing this Agreement, hereby certifies:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the

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provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

**9. PARTIES’ REPRESENTATIVES****9.1. COUNTY’S REPRESENTATIVES**

9.1.1. OC Public Works. The Project is under the general direction of County’s Board of Supervisors. The Board of Supervisors authorizes OC Public Works to be County’s representative in connection with the Project.

9.1.2. County’s Project Manager: Before starting work, County shall designate in writing a Project Manager who shall act as County’s representative during construction of the Project. County may also designate an alternate representative with complete authority to act for it. Unless otherwise expressly stated in the Contract Documents, the Project Manager will issue and receive all written communications on behalf of County for the Project. The Project Manager shall also coordinate any communications to or from County’s Architect-Engineer ("A-E") in connection with the Project. The Project Manager shall manage the routine responsibilities of County but is not authorized to make decisions for County that materially affect this Contract or create additional legal liabilities for County.

**9.2. COUNTY’S AUTHORITY**

County has the final authority in all matters affecting the work. County has the authority to enforce Contractor’s compliance with the Contract Documents. County’s decision is final and binding on all questions relating to: quantities; acceptability of material, equipment, or work; execution, progress, or sequence of work; and interpretation of the Contract Documents. All labor, materials, tools, equipment furnished by Contractor and all work performed by Contractor shall be subject to County’s approval.

**9.3. CONTRACTOR’S REPRESENTATIVES**

9.3.1. Representative and Alternate: Before starting work, Contractor shall designate in writing a representative who shall have complete authority to act for it. Contractor may also designate an alternate representative with complete authority to act for it. County may rely on such representative or alternate as having the authority to execute Change Orders in any amount unless Contractor identifies to County in writing the officer(s) or employee(s) with such authority. The representative or alternate shall be present at the work site whenever work is in progress or whenever weather conditions necessitate its presence to take measures necessary to protect the work, persons, or property. Any order or communication given to this representative shall be deemed delivered to Contractor. A joint venture shall designate only one representative and alternate. In the absence of Contractor’s representative, instructions or directions may be given by County to the superintendent or person in charge of the specific work to which the order applies. Such order shall be complied with promptly and referred to Contractor or its representative. Contractor’s representative and alternate must be able to read, write, and speak English fluently.

9.3.2. Superintendent: Before starting work, Contractor shall submit to County for its review and approval the name of the superintendent who will be employed full-time by Contractor and be present on site at all times while work is being performed. Contractor’s superintendent must be well-qualified, and at County’s request Contractor shall provide documents or information to establish the superintendent’s qualifications. Contractor’s superintendent shall represent Contractor in the absence of Contractor’s designated representative or alternate, and all directions given to the superintendent shall be binding as if given to Contractor. Contractor’s representative or alternate designated in accordance with the preceding paragraph also may serve as Contractor’s superintendent, provided that County approves the selection of the superintendent. The superintendent must read, write, and speak English fluently. County may require Contractor to replace a superintendent whose conduct or performance is unsatisfactory. Contractor shall not change its superintendent without County’s consent unless the superintendent is unsatisfactory to Contractor or ceases to be in Contractor’s employ. If Contractor’s superintendent leaves the Project,

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Contractor shall replace him or her within 24 hours with a new, well-qualified superintendent acceptable to County.

9.3.3. Alternate Supervision Plan: For Projects on which the original Contract Price is \$50,000 or less, Contractor may propose for County's consideration a plan for providing supervision on the site that does not involve the presence of a full-time superintendent, representative, or alternate, as required by the preceding paragraphs. Any such plan must ensure that Contractor's supervision of the work is adequate and effective for purposes of completing the work timely and in compliance with the Contract Documents. County may approve or reject Contractor's proposed plan in its sole and absolute discretion.

9.3.4. Emergency Contacts: Contractor shall provide County with a list of names and telephone numbers at which Contractor's representative, alternate, superintendent, and other key personnel can be reached during non-working hours in the case of an emergency.

#### **10. SIGNATURE REQUIREMENTS**

The Agreement must be signed by officer(s) authorized to bind Contractor. If documentation demonstrating express authority is not provided, then the Agreement must be signed by those officers with apparent authority to bind Contractor. If Contractor is a corporation, such signatures must comply with Corporations Code Section 313, as follows:

- 1) One signature by the chairman of the board, the president, or any vice president; and
- 2) One signature by the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer.

#### **11. ENTIRE CONTRACT**

The Contract Documents represent the entire and integrated agreement between County and Contractor and supersede all prior representations, statements, or agreements concerning the subject matter of this Contract, whether verbal or written.

#### **12. CAMPAIGN CONTRIBUTION DISCLOSURE**

Contractor agrees to comply with Government Code Section 84308. Contractor further agrees to disclose to the County any contribution made to any members of the Board of Supervisors or County Agency Officers by Contractor, Contractor's agent or lobbyist, or, if applicable, any subcontractor(s) for the twelve (12) months prior to and twelve (12) months following the approval, renewal, or extension of this Contract.

\*\*\*SIGNATURE PAGE FOLLOWS\*\*\*

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IN WITNESS WHEREOF, the parties hereto have executed this Contract on the dates opposite their respective signatures:

**KASA CONSTRUCTION INC.**

a California Corporation

Date: 2/13/2024

By: 

Diana Kasbar President

Print Name & Title

*(If a corporation, the document must be signed by two corporate officers. The 1<sup>st</sup> must be either Chairman of the Board, President or any Vice President.)*

Date: 2/13/2024

By: Sam Kasbar

Sam Kasbar Secretary

Print Name & Title

*(If a corporation, the document must be signed by two corporate officers. The 2<sup>nd</sup> must be either an Assistant Secretary, Secretary, Assistant Treasurer or Chief Financial Officer.)*

**COUNTY OF ORANGE,**

a political subdivision of the State of California

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

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM**

Office of the County Counsel  
Orange County, California

By: William Mink  
Deputy

Date: 2/13/2024

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**GENERAL CONDITIONS**

**1. DEFINITIONS**

As used in the Contract Documents, the following terms shall have the following definitions:

Term	Definition
"day"	Unless otherwise specified within the Contract Documents, all references to any "day" or number of "days" shall mean consecutive calendar days (including all holidays and weekends).
"weather day"	Any working day that stoppage of work can reasonably be expected at the Project site due to rain or other adverse weather conditions. Refer to "CONTRACT TIME" and "DELAYS DUE TO WEATHER AND FORCE MAJEURE".
"working day"	Monday through Friday except: Saturday; Sunday; or any day designated as a holiday by County.
Addendum/Addenda	Written or graphic instrument issued prior to the opening of Bids which corrects or changes the Contract Documents.
Agreement	The portion of the Contract Documents, signed by both Parties, that contains the Project name, Contract Price, Contract Time, Liquidated Damages, and other terms and conditions.
Application for Payment	Contractor's periodic or one-time claim for payment based on work completed.
Accepted Project Schedule	Contractor's initial job progress schedule after it has been accepted by County and designated as the Accepted Project Schedule, and updated by each accepted monthly Schedule Update.
Architect-Engineer (A-E)	County's Engineer of Record for the Project, whether County 's own employee or a third-party individual or firm hired to provide A-E services.
Bid	A Bid is an offer made by a Bidder to the County in accordance with the Instructions to Bidders.
Bid Item	An item of work or task listed in the Bid Schedule including the description, quantity (where applicable), and unit cost.
Bid Item, Additive	An item of work that may or may not be included in the amount used to determine the lowest bid, as provided in the "Instructions to Bidders" pursuant to Public Contract Code Section 20103.8, which may be added to the scope of work.
Bid Item, Deductive	An item of work that may or may not be included in the amount used to determine the lowest bid, as provided in the "Instructions to Bidders" pursuant to Public Contract Code Section 20103.8, which may be removed from the scope of work.
Bid Item, Deletable	An item of work that is considered part of a Bidder's base bid but which may or may not be deleted from the Contract Price at any time prior to completion of the work.

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Term	Definition
Bid Item, Final	<p>An item where the estimated quantity for that item of work shall be the final pay quantity, unless the dimensions of any portion of that item are revised by the Engineer of Record, or the item or any portion of the item is eliminated. If the dimensions of any portion of the item are revised, and the revisions result in an increase or decrease in the estimated quantity of that item of work, the final pay quantity for the item will be revised in the amount represented by the changes in the dimensions.” If a final pay item is eliminated, the estimated quantity for the item will be eliminated. If a portion of a final pay item is eliminated, the final pay quantity will be revised in the amount represented by the eliminated portion of the item of work.</p> <p>The estimated quantity for each item of work designated as "Final Quantity" (F) in these Special Provisions shall be considered as approximate only, and no guarantee is made that the quantity which can be determined by computations, based on the details and dimensions shown on the plans, will equal the estimated quantity. No allowance will be made in the event that the quantity based on computations does not equal the estimated quantity.</p> <p>In case of discrepancy between the quantity shown in the “Bid Schedule” Section of these Special Provisions for a final pay item and the quantity or summation of quantities for the same item shown on the plans, payment will be based on the quantity shown in the “Bid Schedule” Section of these Special provisions.</p>
Bid Item, Specialty	An item of work that is considered part of a Bidder’s base bid but which is not considered part of Contractor’s obligation pursuant to the “Contractor’s Obligation to Self-perform the Work ” Section of the Agreement.
Bid Item, Partial Payment	An item of work that is based on the actual quantities required for complete installation in place. Bid shall be made for the quantity listed in the Bid Schedule; however, payment will be based on the actual quantity of work required to complete installation in place, which may be less than the quantity listed in the Bid Schedule.
Bid Schedule	The detailed list of items of work with associated quantities, prices, and type of cost, submitted with each Bidder's Bid.
Bidder	Any individual, firm, partnership, corporation, or combination thereof, submitting a Bid for the Contract, acting directly or through an authorized representative.
Board of Supervisors	County's governing body.
Bulletin	Written or graphic instrument issued prior to the opening of Bids which clarifies or answers general questions about the Contract Documents.
CCR	California Code of Regulations.
Change Order	A modification of the Contract as provided by the "Changes" Section of the General Conditions.
Change Order Request	County's request for Contractor to provide a proposal and price/time quote for County's desired Change Order, or County’s description of work to be performed pursuant to Contractor’s Request for Change.

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Term	Definition
Changed Conditions	Site conditions or materials of an unexpected nature or differing from those represented in the Contract Documents as provided by the "Changes" Section of the General Conditions.
Code Sections	Except where otherwise specified, all statutory references (e.g. "Labor Code" or "Public Contract Code") shall mean those laws enacted by the State of California, as they may be amended.
Contract	The complete agreement between County and Contractor covering the Project, as represented by the Contract Documents.
Contract Documents	Documents comprising the complete agreement between County and Contractor as enumerated in the "Contract Documents" Section of the Agreement.
Contract Price	The total dollar amount of the Contract identified in the "Contract Price and Time" Section of the Agreement as it may be adjusted in accordance with the "Changes" Section of the General Conditions.
Contract Time	The number of calendar days specified in the "Contract Price and Time" Section of the Agreement that Contractor has to complete the work after the issuance of a Notice to Proceed, as it may be adjusted in accordance with the "Changes" Section of the General Conditions.
Contract Unit Price	The amount stated in the Bid for a single unit of an item of work.
Contractor	The Party awarded the Contract by County.
County	The County of Orange, a political subdivision of the State of California, and its representatives.
Defective Work	Contractor's performance that does not conform to the requirements of the Contract Documents, industry standards, manufacturers' recommendations, or requirements of the "Quality of Materials and Workmanship" Section of the General Conditions.
Director	Except where otherwise provided, references to "Director" shall mean the Director of OC Public Works or designee.
Dust Control Plan	Contractor's plan for compliance with County's Fugitive Dust Emission Control Plan in conformance with the SCAQMD Rule 403 (See the "Performance" Section of the General Conditions.)
Emergency/Contingency Plan	Contractor's provisions for handling spills of hazardous, liquid, or nuisance materials prepared in accordance with the "Hazardous or Contaminated Materials" subsection of the "Performance" Section of the General Conditions.
Engineer of Record	The California-registered engineer in responsible charge for the design of the Project and whose seal appears on the Plans and Special Provisions.
Escrowed Documents	Those documents sealed, submitted, and held in accordance with the "Escrowed Documents" Section of the Agreement.
Final Payment	The last and complete payment by County to Contractor under the Contract as provided by the "Payments" Section of the General Conditions.
General Conditions	The portion of the Contract Documents setting forth various conditions and requirements of the Contract.



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Term	Definition
Health and Safety Plan (H&SP)	Contractor's detailed provisions for compliance with all applicable health and safety laws, orders and regulations. (See the "Performance" Section of the General Conditions.)
Lump Sum (LS)	"Lump Sum", "L.S.", or "Job" prices are paid according to a flat total for all labor, materials, overhead, and other costs associated with the work item. (See the "Payments" Section of the General Conditions.)
Manifests	Required documents that identify the generator, transporter, disposal facility and type of hazardous material(s). Manifests include, but are not limited to: documents entitled Uniform Hazardous Waste Manifest(s), Bills of lading, or similar documentation concerning the handling, transportation, and disposal of materials (See the "Hazardous or Contaminated Materials" subsection of the "Performance" Section of the General Conditions.)
Notice of Completion	The document recorded by County in accordance with Civil Code Section 9204 after completion of the work.
Notice of Termination	County's notice to Contractor specifying the effective date of a termination of the Contract (in whole or in part).
Party / Parties	The County and/or Contractor.
Plans	The drawings, profiles, cross sections, standard plans, working drawings, and shop drawings, or reproductions thereof, approved by County, which show the location, character, dimensions, or details of the Project.
Project	All work performed by Contractor as required by, and in strict accordance with, the Contract Documents.
Project Manager (PM)	The County representative identified in the Contract Documents or otherwise specified by County in writing.
Reference Specifications	Those bulletins, standards, rules, methods of analysis or testing, codes, and specifications of other agencies, engineering societies, or industrial association referred to in the Contract Documents. These shall refer to the latest edition, including amendments in effect and published at the time of advertising the Contract or issuing the permit, unless specifically referred to by edition, volume, or date.
Request for Change	Contractor's request that County issue a Change Order.
Retention	The portion withheld from progress payments by County as security for Contractor's complete and proper performance of the Contract as provided by the "Payments" Section of the General Conditions.
Retention Payment	Payment of the Retention in accordance with Public Contract Code 7107 and the "Retention Payment" Section of the General Conditions.
Schedule of Values	Contractor's detailed breakdown of unit prices and costs of services, labor, and materials pursuant to the "Project Schedule and Schedule of Values" Section of the General Conditions.
Schedule Update(s)	Contractor's monthly update of work progress. (See the "Project Schedules" and "Payments" Sections of the General Conditions.)
Special Provisions	The portion of the Contract Documents describing the specific requirements of the Project, which may include additions and revisions to the Standard Specifications setting forth conditions and requirements peculiar to the Project.

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Term	Definition
Standard Plans	Details of standard structures, devices, or instructions referred to on the Plans or in the Special Provisions by title or number.
Standard Specifications	The Standard Specifications for Public Works Construction (SSPWC), known as the "Greenbook," Current Edition, Parts 2 through 5, including any supplements effective as of the time of Bid opening.
Subcontractor(s)	Those contractors independently engaged by Contractor to perform portions of the work.
Submittals	Items that the Contract Documents require Contractor to submit to County after award of the Contract and issuance of the Notice to Proceed, as provided by the "Submittals" Section of the General Conditions.
Supplementary General Conditions	The portion of the Contract Documents identified describing additions and revisions to the General Conditions setting forth conditions and requirements peculiar to the Project.
Traffic Control Plan (TCP)	Contractor's provisions for coordination of its traffic at the Project site. (See the "Performance" Section of the General Conditions.)
Unilateral Change Order	A Change Order issued by the County where County and Contractor cannot reach an agreement on a proposed modification to the Contract.

## 2. COMPLIANCE WITH LAWS AND REGULATIONS

Contractor shall strictly adhere to and obey all applicable laws, statutes, codes, ordinances, rules, regulations, tariffs, and orders of any local, State, or federal governmental or regulatory authority having jurisdiction over the Project.

## 3. CONTRACTOR'S LICENSE

At all times during the term of this Contract, Contractor shall: (a) maintain in good standing all licenses required by the State of California or any other governmental entity for it to perform the work required under the Contract; and (b) comply in all respects with the California Contractors' State License Law, Business & Professions Code Section 7000, et seq.

## 4. SUBCONTRACTS

### 4.1. LICENSED SUBCONTRACTOR

Each Subcontractor selected for the work shall be licensed in the State of California in the Subcontractor's particular field.

### 4.2. COMMUNICATIONS

Communications with Subcontractors shall be made through Contractor except when in emergency situations Contractor is not readily available, in which case detailed instructions shall be transmitted to Subcontractors directly.

### 4.3. RESPONSIBILITY

Contractor shall give personal attention to the fulfillment of the work and shall keep the work under its control. Contractor shall be equally responsible for all work required by the Contract Documents and the acts and omissions of Subcontractors, and all persons directly or indirectly employed by them as Contractor is for Contractor's acts and omissions and of persons directly or indirectly employed by Contractor. Contractor shall indemnify and hold County harmless with respect to the activities of each and every

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Subcontractor in the same manner and to the same degree as if such Subcontractor were the Contractor's employee. Contractor shall pay each Subcontractor promptly the amount allowed Contractor on account of such Subcontractor's work to the extent of such Subcontractor's interest therein.

**4.4. CONTRACTUAL RELATIONS**

Nothing contained in this Contract shall create any contractual relations between County and any Subcontractor.

**4.5. LISTING AND SUBSTITUTION OF SUBCONTRACTORS**

Contractor shall comply with the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Sections 4100 et seq. Contractor may not substitute a person or entity in place of any subcontractor listed in the Bid except with County's written approval in compliance with the provisions of Public Contract Code Sections 4107 et seq.

**5. INTERPRETATION OF CONTRACT DOCUMENTS**

**5.1. PLANS AND SPECIAL PROVISIONS**

5.1.1. Checking: Contractor shall review all Contract Documents immediately upon receiving them and shall promptly notify County of any discrepancies. Contractor shall notify County about the absence of a specification or detail, and such absence shall not excuse Contractor from following standard practices in the industry. Dimensions marked on drawings shall in general be followed in preference to scale measurements. Larger-scale, more detailed drawings shall in general govern over smaller-scale, less detailed drawings. Architectural and engineering schedules shall take precedence over other portions of the Plans. Contractor shall compare all Plans and verify the dimensions before laying out the work and will be responsible for any errors that might have been avoided by doing so. If measurements are affected by site conditions, Contractor shall take new measurements for which Contractor bears full responsibility, and which shall be treated as if represented in the Plans and Special Provisions.

5.1.2. Omissions and Mistakes: Contractor shall call to County's attention as soon as identified any omissions in the Contract Documents or mistakes in details of work that are necessary to carry out the intent of the Contract Documents or that are customarily performed. County shall promptly notify Contractor in writing of the correction. If warranted, County shall issue a Change Order in accordance with the "CHANGES" Section of these General Conditions. If Contractor makes any adjustment to the work without first receiving the County's written correction, such adjustment shall be at Contractor's own risk and expense.

5.1.3. Conflicting Information: In case of conflicting information in the Contract Documents, Contractor shall bid the most expensive alternative.

5.1.4. Documents at the Site: Contractor shall keep available at the site for ready reference a complete set of the Contract Documents. Contractor also shall maintain a complete set of approved shop drawings, manufacturers' recommendations and instructions, and copies of all Project correspondence at the site. Contractor shall provide County with a set of manufacturers' recommendations and instructions.

5.1.5. "As Built" Plans at the Site: Contractor shall maintain at the site a complete "As-Built" set of Plans for the Project. Contractor shall update the As-Built Plans each day. Contractor shall make As-Built Plans available to County immediately upon request. Any delay by Contractor in providing County with access to properly updated As-Built Plans may result in a commensurate delay in County's processing of progress payment applications. Prior to final payment, Contractor shall deliver a complete set of the As-Built Plans to County in a format acceptable to County and suitable for use in preparing a reproducible set of record drawings for the Project.

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5.1.6. Deviations: Contractor shall not deviate from the Plans and the dimensions shown therein, whether or not Contractor believes an error exists, without first obtaining County's written permission for the deviation.

**5.2. DIVISIONS OF THE SPECIAL PROVISIONS**

5.2.1. For convenience, the Special Provisions are arranged in many divisions and sections, but such separations shall not be considered as the limits of the work of any type or as the limits of the work required for any subcontract or trade. Contractor shall bear sole responsibility for defining the scope of work for each trade and each of its Subcontractors. County will not be responsible for any division of work among the various Subcontractors or trades regardless of the location of applicable provisions in the Special Provisions.

5.2.2. Any description of work included in a section is listed for convenience only, and shall not be considered a prescriptive or comprehensive list of items of work necessary to complete the work of that section.

5.2.3. Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many such devices, items, or parts as are required to properly complete the work.

**5.3. PRECEDENCE OF CONTRACT DOCUMENTS**

If there is a conflict among Contract Documents, the document highest in precedence shall control.

The precedence shall be:

1. Permits and applicable regulations as may be provided by law or that govern the site;
2. Amendments and Change Orders;
3. Agreement;
4. Bid, as accepted by County;
5. Addenda and Bulletins;
6. Special Provisions;
7. Supplementary General Conditions;
8. General Conditions;
9. Plans;
10. Standard Plans;
11. Standard Specifications; and
12. Reference Specifications, Attachments, and Appendices.

**6. PRE-CONSTRUCTION**

**6.1. CONTRACTOR'S PRE-CONSTRUCTION OBLIGATIONS**

Prior to beginning construction, Contractor shall: visit the site; verify measurements; become acquainted with all existing conditions; examine all adjoining work and report to County any such work not correctly located or constructed; and ascertain the best means of executing the work. Contractor's or each Subcontractor's commencement of the work of its trade will be interpreted as Contractor's acceptance of existing conditions over which the new work must be placed, installed, or otherwise performed.

**7. BONDS, INDEMNITY, AND INSURANCE**

**7.1. BONDS**

**7.1.1. Payment and Performance Bonds**

Within 10 days after award of the Contract, Contractor shall furnish a payment bond for 100% of the amount of the Contract, in accordance with Civil Code Section 9554, and a performance bond for 100% of the amount of the Contract, guaranteeing the faithful performance of the Contract. Contractor shall take steps

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to assure that the penal sum of the bonds shall be increased by the amount of any additive adjustments to the Contract Price as a result of Change Orders.

The payment and performance bonds must each be issued by a surety that: (i) is authorized by the California Insurance Commissioner to transact surety insurance in the State of California; (ii) has assets exceeding its liabilities in an amount equal to or in excess of the amount of the bonds; and (iii) acts in compliance with Insurance Code Section 12090.

The payment and performance bonds shall be in the form provided with the Instructions to Bidders and are subject to approval by the County.

**7.1.2. County's Right to Replace Surety**

If any surety upon any bond furnished in connection with this Contract becomes objectionable to County and fails to submit to County the documents described in California Code of Civil Procedure Sections 995.660(a)(1) through (a)(4) within the time specified in those Sections, then Contractor shall promptly furnish such additional security as may be required by County to protect the interests of County and of persons entitled to make a claim against the payment bond. Failure to furnish such additional security shall constitute a material breach of the agreement.

**7.2. INDEMNIFICATION**

To the maximum extent allowable by law, Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which the County of Orange's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any loss, injury, liability claims, demands, costs and expenses whether incurred by or made against County or County Indemnitees of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. This indemnity applies even in the event of County or County Indemnitees' concurrent fault, except that nothing in this indemnification provision shall be construed to require Contractor to indemnify County or County Indemnitees for losses caused by County's or County Indemnitees' active negligence, sole negligence, willful misconduct, or defects in design furnished by them.

Contractor's indemnity obligation set forth above shall include but not be limited to all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (1) failure of Contractor to comply with its obligations under the Contract Documents, (2) injury or death of any person or damage to property resulting from the construction of the work or by or in consequence of any negligence in protecting the work; (3) use of materials or other things used or employed in the construction that are not in conformance with the Contract Documents; and (4) any negligent or intentional act or omission by Contractor and any of its respective officers, employees, agents, subcontractors, suppliers, and representatives during the progress of the work or at any time before its completion and final acceptance.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

**7.3. INSURANCE**

Prior to the provision of services under this Contract, Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with County during the entire term of this

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Contract. The County reserves the right to request the declarations pages showing all endorsements and a complete certified copy of the policy. In addition, all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all Subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an additional insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow Subcontractors to work if Subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every Subcontractor and to receive proof of insurance prior to allowing any Subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the term of this Contract for inspection by County at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of subcontractor's work hereunder, subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Contractor and Additional Insureds.

If Contractor fails to maintain insurance acceptable to County for the full term of this Contract, the County may terminate the contract.

7.3.1. 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**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

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

7.3.2. Minimum Policy Limits and Coverage

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

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<u>Coverage</u>	<u>Minimum Limit(s)</u>
Commercial General Liability	\$3,000,000 per occurrence \$3,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

7.3.3. Required Coverage Forms

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

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.

7.3.4. Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad 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-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange, shall be excess and non-contributing.
- 3) A Products and Completed Operations endorsement using ISO Form CG2037 (ed. 10/01) or a form at least as broad, or an acceptable alternative is the ISO form CG2010 (ed. 11/85).

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against **the County of Orange, its elected and appointed officials, officers, employees and agents** or provide blanket coverage which shall state **AS REQUIRED BY WRITTEN CONTACT** when acting within the scope of their appointment or employment.

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment.

Contractor 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 the Contract, upon which County may suspend or terminate this Contract.

The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).

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Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor in any way to reduce the policy coverage and limits available from the insurer.

#### **7.4. RESPONSIBILITY FOR DAMAGES OR INJURY**

7.4.1. County and its officers and employees shall not be liable in any manner for any loss or damage to any portion of the work, any loss or damage to any of the materials or equipment used in the work, or any injury to any person or property by any cause that might reasonably have been prevented by Contractor, its employees, or its Subcontractors. Contractor shall indemnify and defend County against any claims or liability under this section pursuant to the "Indemnification Provisions" Section of these General Conditions.

7.4.2. Contractor shall remove and dispose of any waste materials, including soils or other materials that become contaminated directly or indirectly as a result of Contractor's performance under this Contract, according to the "Hazardous or Contaminated Materials" Section of the General Conditions.

7.4.3. Payment of any penalties, fines, or other liability assessed to County by regulatory agencies due to Contractor's or any Subcontractor's action or inaction in performing the work shall be Contractor's sole responsibility.

7.4.4. Contractor shall pay any assessments or damages covered by this Section directly, or, at County's discretion, County may pay or retain the amount of such assessments or damages and deduct its costs from payments owed or as they become due to Contractor.

### **8. SCHEDULES, SUBMITTALS, SUBSTITUTIONS, AND INSPECTIONS**

#### **8.1. PROJECT SCHEDULES**

8.1.1. Project Schedules: Prior to County's issuance of the Notice to Proceed, Contractor shall submit to County for County's review an initial job progress schedule. County's acceptance of the initial job progress schedule shall be conditioned on its acceptance of all other documents Contractor is required to submit to County. Contractor's acceptance of this schedule does not modify any of the provisions of the Contract Documents including, but not limited to, the Contract Time or any time specified in the Contract Documents for County's review of submittals.

Once the Notice to Proceed is issued, the job progress schedule shall be updated to reflect the Contract Time as defined in the Agreement. Unless a specific software application is called for elsewhere in the Contract Documents, Contractor shall use Microsoft Project, SureTrak Project Manager, Primavera Project Planner, or other scheduling software acceptable to County to configure all versions of its job progress



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schedule. Contractor shall prepare the job progress schedule using the critical path format. Schedule activities shall be of sufficient detail to assure that adequate planning has been done for proper execution of all of Contractor's work. The job progress schedule shall show the sequence, duration, and interdependence of activities required for the complete performance of all of Contractor's work.

Contractor shall include on the job progress schedule the schedule for submittals, shop drawings, procurement, fabrication, and delivery for major materials and equipment required for the Project, and shall allow no less than 21 days for County's review of each such submittal. After Contractor's initial job progress schedule is accepted by County, it will be designated as the "Accepted Project Schedule". An Accepted Project Schedule is a condition precedent to County's obligation to make the initial progress payment to Contractor.

8.1.2. Weekly Meetings and Look-Ahead Charts: Contractor shall participate in weekly meetings with County during which the parties shall exchange information regarding the actual progress of construction. County and Contractor shall attempt to agree upon quantities and percentages of completion that reflect the actual progress of construction. At each meeting Contractor shall submit 4 copies of a 2-week look-ahead chart. The 2-week look-ahead chart shall include only those activities that will be started, in progress, or completed during the next 2-week period. The format of the look-ahead chart shall be subject to County's approval.

8.1.3. Monthly Schedule Updates: Each month, Contractor shall submit to County for its review an update of the Accepted Project Schedule. The monthly Schedule Update shall reflect agreed assessments of actual completion reached during weekly meetings. If County and Contractor cannot agree, then Contractor shall use County's assessment of actual progress to prepare the Schedule Update. Contractor's monthly Schedule Update shall include: (a) a diagram showing the target versus actual dates for each activity; (b) an updated critical path method report; and (c) a narrative report that includes, but is not limited to, a description of problems, current and anticipated delays and their causes, impacts of delays, and corrective actions that Contractor has taken or proposes to take to overcome problems and recover from delays. Contractor shall identify any events that will delay the completion of an interim milestone or the completion of the overall Project in the monthly Schedule Update. On County's acceptance of the monthly Schedule Update, it shall become the current Accepted Project Schedule. Any request for an extension of the Contract Time must be based on the Accepted Project Schedule. The submission of an acceptable monthly Schedule Update will be part of the basis of the progress payment and shall be a condition precedent to County's obligation to make such progress payment to Contractor.

8.1.4. Recovery Schedule: If any activity on the critical path is more than 7 days behind the Accepted Project Schedule and it appears to County that Contractor may not complete all work within the Contract Time, then County may require Contractor to submit a recovery schedule demonstrating its proposed plan to make up all lost time and complete the Project within the Contract Time. Contractor shall submit its recovery schedule within 7 calendar days of County's request. If County finds the proposed recovery schedule unacceptable, it may require Contractor to submit a revised plan or to take actions that are, in County's judgment, necessary to recapture lost time, including but not limited to increasing: (a) manpower; (b) the number of working hours per day; (c) the shifts per working day; (d) the number of working days per week; (e) the amount of equipment; or (f) any combination of the foregoing. Contractor's entitlement to additional compensation, if any, will be determined in accordance with the provisions of the "Changes" Section of the General Conditions.

## **8.2. SCHEDULE OF VALUES**

Prior to County's issuance of the Notice to Proceed, Contractor shall submit a proposed Schedule of Values for County's review and approval. The Schedule of Values shall include sufficient detail and be supported by sufficient data as County, in its sole discretion, may deem necessary to substantiate its accuracy and to evaluate progress at any point in the Project. The Schedule of Values shall include the general categories noted in the Bid Schedule, subdivided into their various components for the costs of trade subcontractors'

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services, labor, and material based when possible upon actual subcontract, purchase order, or vendor prices. Subdivisions of work should be described by easily identifiable and measurable units.

**8.3. CONTRACTOR'S SUBMITTALS**

8.3.1. General: Contractor shall electronically submit to County copies of all submittals required by the Contract Documents, including but not limited to: shop drawings, working drawings, descriptions of materials and equipment to be supplied, supporting information, and other submittals (collectively "Submittals"). All submittals shall be provided at Contractor's expense. Contractor shall carefully review each Submittal before delivering it to County. Contractor shall provide a signed, dated transmittal letter with each Submittal certifying that the Submittal is correct and in strict conformance with the Contract Documents. Contractor shall allow no less than 21 calendar days for County to review each Submittal. Contractor is expected to make a complete and acceptable Submittal by the second submission as to any item, and County reserves the right to withhold moneys otherwise due Contractor to cover additional costs of County's reviews beyond the second Submittal.

8.3.2. County's Review: When the Contract Documents require a Submittal, Contractor shall not furnish or fabricate any materials or equipment and shall not perform any work covered by the Submittal until County has reviewed and notified Contractor that County takes no exceptions to the Submittal. Any fabrication or other work performed in advance of receiving County's notice of no exceptions shall be entirely at Contractor's risk and expense. Contractor is responsible for the correctness of each Submittal. County's review of a Submittal shall not relieve Contractor from responsibility for any errors or omissions in the Submittal or from any performance requirements of the Contract Documents. In the transmittal letter that accompanies the Submittal, Contractor shall call to County's attention any deviations from the Contract Documents. Contractor shall furnish all materials and perform all work for which Submittals are required in accordance with the Submittals that County has reviewed and has taken no exception.

8.3.3. Working Drawings: Working drawings are drawings showing details not shown on the Plans, which details Contractor must design. Contractor must prepare working drawings of a sufficient size and scale to show clearly all necessary details. Contractor shall ensure that when required by California law or the Contract Documents, working drawings are prepared by engineers holding valid professional licenses in the applicable engineering discipline.

8.3.4. Shop Drawings: Shop drawings are drawings showing details of manufactured or assembled products that Contractor proposes to incorporate into the work. Contractor shall submit the shop drawings required by the Contract Documents.

8.3.5. Supporting Information: Supporting information is information required by the Contract Documents or requested by County when reviewing a submittal that County determines is necessary to analyze and verify that the submittal conforms to the Contract Documents or will be needed by County to operate and maintain a manufactured product or system to be constructed as part of the work. Contractor shall submit supporting information for a system bound together and include information about all manufactured items for the system. Unless otherwise specified in the Contract Documents, supporting information shall comply with applicable requirements of the Standard Specifications and may include the following at the discretion of County:

- (a) List of Subcontractors;
- (b) List of Materials;
- (c) Manufacturer's certifications (or Certification of Compliance) that materials to be supplied meet the requirements of the Contract Documents, where the Contract Documents allow such certifications or County waives materials testing requirements. County may require materials test data as part of the certification;
- (d) Concrete mix designs;

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- (e) Asphalt concrete mix designs;
- (f) Data including but not limited to catalog sheets, manufacturer's brochures, technical bulletins, specifications, diagrams, product samples, and other information necessary to describe a system, product or item. This information may be required for irrigation systems, street lighting systems, and traffic signals, and may also be required for any product, manufactured item, or system;
- (g) Pipeline layout diagrams; and
- (h) Controller Cabinet Wiring Diagrams.

**8.4. SUBSTITUTIONS – BRAND OR TRADE NAMES**

8.4.1. Unless County has made a finding under Public Contract Code Section 3400(c), whenever the Contract Documents specify any materials, products, things, or services by brand, trade, or proprietary name, by patent, or by manufacturer, such specifications shall be deemed to be a measure of quality and utility or a standard and shall be deemed to be followed by the words "or equal".

8.4.2. If Contractor desires to use any other brand or manufacturer of equal quality, performance, and utility to that specified, it shall apply to County in writing within 35 days after the award of the Contract. Contractor shall electronically submit to County copies of each application for an "or equal" determination. Contractor's application shall include all information required for County to evaluate the substitute items, including but not limited to shop drawings, product data, and certified test results.

8.4.3. Contractor shall have the item tested as required by County to determine that the quality, strength, performance, physical, chemical, or other characteristics including but not limited to durability, finish, efficiency, dimensions, service, suitability, and compatibility with County's operations are such that the item will be equal in quality and utility to the item specified. Contractor's written application constitutes its representation that:

- (a) Contractor has investigated the proposed item and determined that it meets or exceeds in all respects the quality, performance, and utility of the specified item.
- (b) Contractor will provide the same warranty as for the specified item.
- (c) Contractor will coordinate installation and make such modifications, which may be required for the work to be complete in all respects, with no addition to the Contract Time or the Contract Price.
- (d) Contractor waives all claims for reimbursement for additional costs which may subsequently become apparent by reason of the acceptance and use of such "or equal" materials, equipment, products, processes, or articles.

8.4.4. County will then determine, in its sole discretion, whether or not the proposed materials, products, things, or services are equal in quality, performance, and utility to those specified, and its decision shall be final and binding. Contractor shall not use or install any materials, products, things, or services proposed as "or equal" without county's prior approval. Contractor shall remain solely responsible for the suitability of such proposed material, products, things, or services notwithstanding any determination by County. Contractor shall bear all expenses associated with its application for determination of "or equal" status.

8.4.5. Any request by Contractor to change materials, products, things, or services required by the Contract Documents that does not fall within the above provisions relating to Public Contract Code Section 3400 shall be considered pursuant to the "CHANGES" Section of these General Conditions. County will determine, in its sole discretion, whether or not to accept the requested change.

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**8.5. INSPECTION AND TESTING REQUIREMENTS**

8.5.1. Materials or Equipment Subject to Testing: Materials or equipment to be incorporated into the work will be subject to inspection and tests by County or its designated representative. Before incorporation into the work, Contractor shall furnish without charge such samples as County may require.

8.5.2. Contractor's Testing Responsibilities: Whenever testing is required by County or these Contract Documents, Contractor shall perform such testing at its expense unless otherwise specified in the Plans or Special Provisions. Contractor shall deliver materials or equipment for testing at a location in the United States unless otherwise approved by County. All tests shall be made by an independent testing agency or laboratory, registered with and approved by County for the nature of work to be examined. If any tests indicate noncompliance with the Contract Documents, all retesting shall be provided at Contractor's expense.

8.5.3. Notice to County: Contractor shall notify County in writing of its intention to use materials or equipment for which tests are required as soon as such materials or equipment are available for testing. The notice shall specify the date on which County intends to use the materials or equipment. The notice shall be provided so as to allow sufficient time to perform the tests, but in no event shall the notice be provided fewer than 15 days prior to Contractor's use of the materials or equipment. If Contractor fails to use the materials or equipment on the date specified in the notice, then County may require retesting if County determines that retesting is necessary to ensure the materials or equipment do not require replacement. The date and time of any tests shall be approved by County. The notice shall identify the proposed supplier and source of material.

8.5.4. Inspection of Materials or Equipment at Source of Supply: County may inspect, sample, or test materials or equipment at the source of supply, manufacturing plant, or other locations as appropriate; but such inspection, sampling, or testing will not be undertaken until County is assured by Contractor of the cooperation and assistance of both Contractor and the supplier of the material. Contractor shall ensure that adequate facilities are furnished free of charge to make such inspections. Contractor shall ensure that County has free access at all times to the materials or equipment to be inspected, sampled, or tested. Contractor shall provide safety measures as necessary to protect County personnel or representatives from construction activities while making field tests.

8.5.5. Inspection of Production or Manufacturing Process: County may inspect the production or manufacture of materials or equipment at the source of supply. Such plant inspection, however, will not be undertaken until County is assured of the cooperation and assistance of both Contractor and the materials producer or equipment manufacturer. County or its authorized representative shall have free entry at reasonable times to such parts of the plant as concern the manufacture or production of the materials or equipment.

8.5.6. Inspection Does Not Guarantee Acceptance: Inspections and tests shall in no way be considered a guarantee of acceptance of such materials or equipment, nor of continued acceptance of materials or equipment presumed to be similar to that upon which inspections and tests have been made. Inspection and testing performed by County shall not relieve Contractor or Contractor's suppliers of responsibility for quality control or otherwise limit its warranty obligations or other obligations related to quality of work required by the Contract.

8.5.7. Records of Inspections: Contractor may examine reports and records of inspections that are County's obligation to perform when such reports and records are available at the work site.

8.5.8. Certificate of Compliance/Manufacturer's Certification: Contractor shall furnish a Certificate of Compliance prior to using any materials for which the Contract Documents require such a certificate. The form of the Certificate shall be as directed by County. As authorized by the Contract Documents, County may permit the use of materials or equipment accompanied by a Certificate of Compliance prior to sampling and testing. The Certificate shall be signed by the producer and shall state that the materials or equipment comply in all respects with the requirements of the Contract Documents. Contractor shall furnish a

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Certificate of Compliance with each lot of materials or equipment delivered to the work, and the lot so certified shall be clearly identified in the Certificate.

All materials or equipment used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that materials or equipment are used on the basis of a Certificate of Compliance shall not relieve Contractor of responsibility for using materials or equipment that conform to the requirements of the Contract Documents, and any materials or equipment not conforming to such requirements will be subject to rejection whether or not in place. County reserves the right to verify that supplied materials or equipment comply with the Contract Documents through inspection, testing, or any other manner as may be provided for in the Contract Documents notwithstanding receipt of a Certificate of Compliance.

**9. PAYMENTS**

**9.1. PAYMENT REQUIREMENTS**

9.1.1. Form and Contents of Applications for Payment: Contractor must submit applications for payment on a form approved by County.

Each application for payment must include:

- (a) A current Schedule of Values (when requested) and monthly Schedule Update with a narrative report, all approved in writing by County and all developed in accordance with the Schedules, Submittals, Substitutions and Inspections Section of the General Conditions. Contractor's submissions of an Accepted Project Schedule, monthly Schedule Updates, and Schedule of Values are conditions precedent to County's processing of applications for payments;
- (b) Photographic documentation of completed work (if requested);
- (c) If requested, Contractor shall provide electronic copies of certified payrolls from Contractor and all Subcontractors for the period covered by the application for payment, with one copy having all pertinent information visible and two copies having the workers' names, addresses, and social security numbers blacked out;
- (d) Evidence satisfactory to County that Contractor is fulfilling its obligations under the Contract Documents with respect to preparing daily reports and maintaining up-to-date As-Built Plans;
- (e) Conditional waivers and releases on progress payment or final payment (as applicable) from Contractor, those Subcontractors of any tier, and those suppliers claiming funds covered by the application for payment, and unconditional waivers and releases on progress payment or final payment from Contractor, those Subcontractors of any tier, and those suppliers who received funds through the preceding applications for payment, all in the form prescribed by Civil Code Sections 8120 through 8138; and
- (f) Any other administrative documentation as agreed upon.

The application for payment shall show the total value of work completed or partially completed as of the date of submission of the application for payment. At County's sole discretion, the value of the work completed may include up to 50% of the value, as determined by County, of: (i) material delivered to the Project site and not yet incorporated into the construction; and/or (ii) materials delivered to Contractor and stored at locations other than the Project site, provided that Contractor furnishes County satisfactory evidence that Contractor has acquired title to the materials, the materials will be used on the Project, the materials are properly stored at a secure off-site location acceptable to County, and the materials at each storage location are segregated from any other materials there that are not

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intended for use on the Project. County will not pay Contractor for any materials at the Project site that are furnished but are not to be incorporated into the work.

County reserves the right to adjust a payment application if a prior payment application is determined to have been overstated or understated.

9.1.2. Lump Sum Work and Unit Prices: County shall pay for work shown on the Bid Schedule as "Lump Sum", "L.S.", or "Job" at the lump sum price shown. Work for which the Bid Schedule shows a unit price will be paid for at the actual quantities constructed in accordance with the Contract Documents, not at the quantities shown in the Bid Schedule. Upon completion of the work, if the actual quantities show either an increase or decrease from the quantities stated in the Bid Schedule, the unit price stated in the Bid Schedule will apply unless a change to the unit price is warranted under the "Changes" Section of the General Conditions.

9.1.3. Time for Submitting and Reviewing Applications for Payment: Contractor shall submit each application for payment to County for its review on the last business day of the month for which it is seeking payment. County will review the application for payment as soon as practicable and, no later than 7 days after receiving it or as provided by Public Contract Code Section 20104.50, will return to Contractor any application for payment that County determines is not a proper application for payment suitable for payment along with a written explanation of the reasons why the application for payment is not proper. The grounds on which the County may conclude the application for payment is not proper and not suitable for payment include, but are not limited, to: (i) the application is missing documents required under the preceding Section "Form and Contents of Applications for Payment"; (ii) the application does not accurately reflect the progress of the work; (iii) the quality of the work is not in conformance with the requirements of the Contract Documents; (iv) Contractor has failed to remedy defective work; (v) there are third party claims filed against County arising out of Contractor's work; (vi) Contractor has failed to make payments properly to subcontractors and suppliers; (vii) Contractor has damaged County's property or the work by or property of County's separate contractors; (viii) Contractor has repeatedly failed to carry out the work in accordance with the Contract Documents; or (ix) there is reasonable evidence that Contractor will not complete the work within the Contract Time and that the unpaid balance of the Contract Price would not be adequate to cover the Liquidated Damages for the anticipated delay.

9.1.4. Progress Payments: Within 30 days of receiving an undisputed, properly completed application for payment, or as provided by Public Contract Code Section 20104.50, County shall pay to Contractor a sum equal to 95% of the value of the work completed since the commencement of the work, less all previous payments. County shall hold 5% of the value of the work completed as Retention until the Retention Payment is made pursuant to Public Contract Code Section 7107. Contractor may be entitled to interest pursuant to Public Contract Code Section 20104.50 if County fails to timely make any progress payment. No progress payment by County shall be considered to be County's acceptance of any part of the work.

9.1.5. Retention Payment: Payment of the Retention amount will be made in accordance with Public Contract Code Section 7107. If the Retention Payment is made before Contractor has complied with all of its obligations under the Contract, then payment of Retention shall not be interpreted as Final Payment, and shall not relieve Contractor of its obligations under the Final Payment provisions.

9.1.6. Final Payment: The Final Payment, if unencumbered, or any part thereof unencumbered, shall be made no later than 60 days after Contractor completes the work and submits an application for Final Payment in proper form and suitable for payment. Contractor's work will not be complete until Contractor has delivered: (i) As-Built Plans suitable for use in preparing a reproducible set of record drawings for the Project; (ii) all operations and maintenance manuals; (iii) manufacturers', suppliers', and installers' warranties, guarantees, instruction sheets, and parts lists; and (iv) any other documents or information required by the Contract Documents as a condition to completion of the work.

Contractor's application for Final Payment shall include:

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- (a) Contractor's affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project have been paid or otherwise satisfied by Contractor; and
- (b) Conditional waivers and releases on Final Payment in the form prescribed by Civil Code Section 8136 from Contractor, its Subcontractors of any tier, and its suppliers who will receive funds from the Final Payment, listing with specificity any and all claims under or arising out of the Contract or the Project that remain unsettled.

**9.2. SUBSTITUTED SECURITY**

In accordance with Public Contract Code Section 22300 and at the request and expense of Contractor, prior to the award of the contract, County will accept securities equivalent to any amount withheld by County to ensure complete and proper performance under the Contract Documents, including the amount withheld as Retention under the "PAYMENTS" Section of the General Conditions. Substituted securities must meet the requirements of Public Contract Code Section 22300 and shall be deposited with County or with a California or federally chartered bank in California as escrow agent. The securities shall be held by the escrow agent subject to a written escrow agreement between County, Contractor, and escrow agent, which agreement shall be in a form substantially similar to that contained in Public Contract Code Section 22300.

**9.3. WAIVER OF CLAIMS**

Unless a shorter time is specified elsewhere in the Contract, on or before making its application for Final Payment, Contractor shall submit to County in writing all claims for compensation under or arising out of this Contract. Contractor's acceptance of County's payment in response to Contractor's application for Final Payment shall constitute a waiver of all claims against County under or arising out of this Contract except those previously made in writing and identified by Contractor as unsettled at the time of Contractor's application for Final Payment.

**10. LABOR CODE REQUIREMENTS**

Contractor and all Subcontractors shall comply with all applicable requirements of the Labor Code throughout the performance of the Contract, including but not limited to the following:

**10.1. WAGE RATES**

Contractor and any Subcontractor(s) shall comply with the provisions of California Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post all job site notices as required by Labor Code Section 1771.4(a), including a copy of these wage rates for each craft, classification, or type of worker needed in the performance of this Contract. Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at [www.dir.ca.gov](http://www.dir.ca.gov). If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

**10.2. WAGE RATE PENALTY**

Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Section 1775. Contractor and any Subcontractor(s) shall be subject to a penalty in an amount up to \$200, or a higher amount as provided by Section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done by the Contractor or Subcontractor(s) under the Contract.

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**10.3. WORK HOUR PENALTY**

As provided by Labor Code Section 1810, 8 hours of labor shall constitute a legal day's work, and 40 hours shall constitute a legal week's work. The time of service of any worker employed under the Contract shall be restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as provided herein. Contractor shall forfeit to County \$25, or a higher amount as provided by Labor Code Section 1813, for each worker employed in the performance of this Contract by Contractor or by any Subcontractor(s) for each calendar day during which such worker is required or permitted to work more than the legal day's or week's work, except as provided by Labor Code Section 1815.

**10.4. REGISTRATION OF CONTRACTORS**

Contractor and all Subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.

**10.5. PAYROLL RECORDS**

Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

10.5.1. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.

10.5.2. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (a) The information contained in the payroll record is true and correct.
- (b) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.

10.5.3. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.

10.5.4. Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.

10.5.5. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this Section due to the failure of a Subcontractor to comply with this Section.



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**10.6. APPRENTICES**

10.6.1. Unless the Contract involves a dollar amount less than that specified in Labor Code Section 1777.5, this Contract is governed by the provisions of Section 1777.5. Contractor shall comply with Labor Code Section 1777.5 for all apprenticeable occupations.

10.6.2. Contractor and all Subcontractor(s) shall comply with Labor Code Section 1777.6, which forbids discriminatory practices in the employment of apprentices on any basis listed in Government Code Section 12940 (described in the "Nondiscrimination" Section of the General Conditions), except as provided in Labor Code Section 3077.

**11. NONDISCRIMINATION**

In the performance of the Contract, Contractor shall neither engage in nor permit its Subcontractors to engage in discrimination against any employee or applicant for employment on any basis listed in California Government Code Section 12940, including but not limited to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, as those bases are currently defined in Government Code Sections 12926 and 12926.1, or as they may be modified. This prohibition shall pertain to employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters.

**12. WARRANTY / GUARANTEES**

**12.1. WARRANTY**

Contractor warrants that materials and equipment furnished under the Contract Documents will be new, of good quality, and carrying all available manufacturers' and installers' warranties; that construction will be of good and workmanlike quality; and that all of the work shall be performed in strict conformance with the requirements of the Contract Documents, industry standards, and manufacturers' recommendations. Work not conforming to these requirements shall be considered defective ("Defective Work"). Defective Work does not include damage caused by modifications not executed by Contractor or its Subcontractors, improper operation or maintenance, or normal wear and tear.

**12.2. ONE-YEAR CORRECTION PERIOD**

For a period of not less than one year from the date County accepts Contractor's work, as evidenced by a Notice of Completion issued by County, Contractor shall take immediate action to correct any Defective Work reported by County orally or in writing. Contractor shall initiate corrective action on Defective Work affecting use of a facility, safety, or preservation of property within twenty-four (24) hours after notification. Contractor shall initiate corrective action on other Defective Work within ten (10) calendar days after notification. If Contractor fails to initiate corrective action within the specified times or fails to complete the corrective work within a reasonable time, County may take whatever corrective action it deems necessary. All costs incurred by County because of Contractor's failure to correct Defective Work during the one-year correction period shall be due and payable immediately by Contractor. The one-year correction period relates only to the specific obligation of Contractor to return to the Project site and correct Defective Work. The one-year correction period does not establish a period of limitations with respect to any of Contractor's other obligations under the Contract Documents, including but not limited to Contractor's warranty, and it has no relationship to the time within which County may seek to enforce the Contractor's obligation to comply with the Contract Documents or to the time within which proceedings may be commenced to establish the Contractor's liability with respect to any of the Contractor's obligations.

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**12.3. MANUFACTURERS' AND INSTALLERS' WARRANTIES**

All manufacturers' and installers' warranties received by Contractor shall be assignable to County, and upon abandonment, termination, or completion of the Agreement shall be deemed, and hereby are, assigned to County. Contractor shall take all actions necessary to preserve the full scope of all manufacturers' and installers' warranties for the benefit of County and shall take no action that would impair County's rights under any such warranties. Before County's acceptance of the work, Contractor shall deliver to County manufacturers' and installers' warranties, guarantees, instruction sheets, and parts lists, which are furnished with certain articles of materials incorporated in the work.

**12.4. SURVIVAL**

All of Contractor's warranty obligations shall survive abandonment, termination, and completion of the Contract. Neither Final Payment nor any other provision in the Contract Documents shall constitute County's acceptance of work not performed in accordance with the Contract Documents nor relieve Contractor of liability with respect to its warranty obligations or for Defective Work.

**13. PERFORMANCE**

**13.1. OBLIGATION TO REVIEW DOCUMENTS**

13.1.1. Contractor shall carefully study and compare all Contract Documents and shall at once report to County any error, inconsistency, or omission that Contractor may discover; but Contractor shall not be liable to County for any damage resulting from any errors or deficiencies in the Contract Documents if the provisions of this Section are performed by Contractor.

13.1.2. Contractor shall be responsible for the coordination of all trades so that all components are properly integrated into the construction. All significant conflicts in location shall be brought promptly to the attention of County. In the event of conflicts that cannot be anticipated and resolved by examination of the Contract Documents, the cost of changes ordered by County shall be compensated by Change Order.

**13.2. OTHER CONTRACTS**

County may undertake or award other contracts for simultaneous, collateral, or additional work adjacent to or within the work site. Contractor shall fully cooperate with such other contractors and County, and carefully fit Contractor's own work to such other work as may be directed by County. Contractor shall be responsible for ascertaining the nature and extent of any simultaneous, collateral, or additional work by others. Contractor shall not commit or permit any act that will interfere with the performance of work by County or any other contractor, and shall cooperate in the coordination of its separate activities in a manner that shall not interfere with County's current facility operations and the activities of other contractors working in the area. Contractor shall include in its Bid all costs involved as a result of coordinating its work with others. If necessary, for coordination purposes, Contractor shall redeploy its forces to other parts of the work.

**13.3. PROTECTION**

13.3.1. Contractor shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety and Health. Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the Project, except for any completed unit of construction that County may have previously accepted.

13.3.2. Contractor shall maintain continuously adequate protection of all work from damage and shall protect County's personnel, invitees, and property from damage, injury, or loss arising in connection with this Contract. Contractor shall make good any such damage, injury, or loss. Contractor shall adequately protect adjacent property and shall maintain reasonable security of the site at all times. Contractor shall

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limit visitors to the site to those necessary for construction and inspection. Visitors for other purposes shall be referred to County. Contractor's and Subcontractors' employees shall possess means of identification at all times as required by County while on the job site.

13.3.3. County may notify Contractor of any noncompliance with the foregoing provisions and the action to be taken. Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices shall be deemed sufficient for said purpose when delivered to Contractor or Contractor's representative at the work site. Failure of receipt of such notice from County shall not relieve Contractor of responsibility for safety.

13.3.4. If Contractor fails or refuses to comply promptly, County may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of claim for extension of time or additional compensation to Contractor. Contractor will be responsible for ensuring that Contractor's Subcontractors and suppliers comply with the provisions of this Section.

13.3.5. In an emergency affecting the safety of persons, the work, or of adjoining property, Contractor without special instruction or authorization from County, is hereby permitted to act at Contractor's discretion to prevent such threatened loss or injury. Contractor shall so act if directed by County. Any claim for additional compensation by Contractor on account of emergency work shall be determined as set forth in the "CHANGES" Section of these General Conditions.

13.3.6 Contractor shall comply with the County's Safety and Loss Prevention Resource Manual and submit a copy of their Injury and Illness Prevention Program (IIPP) to the Project Manager prior to the start of the project. The IIPP shall meet the minimum requirement of California Code of Regulations, Title 8, Section 1509 or 3203. Contractor shall submit other safety programs that pertain to the type of job that will be performed on site.

#### **13.4. QUALITY OF MATERIALS AND WORKMANSHIP**

13.4.1. Contractor shall perform all work required by the Contract Documents in a skillful, good, and workmanlike manner and in strict conformance with the Contract Documents. All materials and equipment furnished by Contractor shall be new and of good quality, unless otherwise required by the Contract Documents.

13.4.2. Contractor shall supervise and direct the work using its best skill and attention. All labor shall be performed by individuals specially skilled in the kind of work required. Contractor shall at all times enforce strict discipline and good order among its employees and those of its Subcontractors of any tier. Contractor shall not employ for the Project any unfit person or anyone not skilled in the assigned task or otherwise unfit. Contractor shall immediately remove from the Project any person that County determines, in its sole discretion, is unfit or behaving in an unsatisfactory or unacceptable manner. Persons so removed shall not thereafter be reassigned to any portion of the Project without County's written approval, which may be granted or withheld in County's sole discretion.

13.4.3. Contractor shall, without charge, replace any material or correct any work found by County not to conform to the requirements of the Contract Documents, unless County consents to accept such material or work along with a commensurate reduction in the Contract Price. Contractor shall promptly segregate and remove rejected material from the work site.

13.4.4. If Contractor does not promptly replace rejected material or correct rejected work, or immediately remove persons who are unfit or behaving unacceptably, County may: (1) by contract or otherwise replace such material or correct such work and charge the cost thereof to Contractor, including but not limited to by deducting the cost from amounts due or to become due to Contractor; or (2) terminate Contractor's right to proceed in accordance with the "TERMINATION FOR CAUSE" Section of the General Conditions.

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**13.5. SURVEYING**

13.5.1. Contractor shall notify County at least 7 days before starting work to allow for the preservation of survey monuments, lot stakes, and benchmarks. Contractor shall not disturb survey monuments, lot stakes, or benchmarks without the consent of County, and shall bear the expense of replacing any that may be disturbed without such consent. Replacement shall be done only under the direction of County by a Registered Licensed Land Surveyor or a Registered Civil Engineer authorized to practice land surveying within the State. When a change is made in the finished elevation of the pavement of any roadway in which a permanent survey monument is located, Contractor shall adjust the monument cover to the new grade within 7 days of finished paving unless otherwise instructed by County. Contractor shall preserve construction survey stakes and marks for the duration of their usefulness, and will bear the expense of any survey stakes that are lost or disturbed and need to be replaced.

13.5.2. Contractor shall notify County in writing at least 7 days before survey services will be required in connection with the laying out of any portion of the work. Contractor shall dig all holes necessary for line and grade stakes. Unless otherwise specified in the Contract Documents, stakes will be set and stationed by County for curbs, headers, sewers, storm drains, structures, and rough grade. A corresponding cut or fill to finished grade (or flowline) will be indicated on a grade sheet.

13.5.3. All work shall conform to the lines, elevations, and grades shown on the Plans. Three consecutive points set on the same slope shall be used together so that any variation from a straight grade can be detected. Any such variation shall be reported to County. In the absence of such report, Contractor shall be responsible for any error in the grade of the work. Grades for underground conduits will be set at the surface of the ground. Contractor shall transfer them to the bottom of the trench.

13.5.4. Surveying by Contractor shall conform to the quality and practice required by County.

**13.6. UTILITIES**

13.6.1. Location: County will provide Contractor with copies of documents which describe the location of known utility substructures, or will indicate in the Plans or Special Provisions those substructures (except for service connections) that may affect the work. The removal, relocation, abandonment, or installation of utilities shall be in accordance with the applicable provisions of the Contract Documents. Where underground main distribution conduits such as water, gas, sewer, electric power, telephone, or cable television are shown on the Plans, Contractor shall assume that every property parcel or facility adjoining the Project will have a service connection for each type of utility. Contractor shall determine the location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which may affect or be affected by its operations. Unless otherwise specified in the Contract Documents, costs associated with complying with the requirements of this Section shall not entitle Contractor to additional compensation under the "Changes" Section of the General Conditions. Pursuant to Government Code Sections 4216 et seq., Contractor shall contact the appropriate regional notification center(s) and shall obtain an inquiry identification number at least 2 working days, but not more than 14 calendar days, prior to commencing any excavation.

13.6.2. Protection: Contractor shall not interrupt the service function or disturb the support of any utility without authority from the utility owner or direction from the County. Valves, switches, vaults, and meters shall be maintained readily accessible for emergency shutoff. Where protection is required to ensure support of utilities located as shown on the Plans or in the Special Provisions, Contractor shall furnish and place the necessary protection at its expense unless otherwise provided in the Contract Documents. Permanent improvements installed in proximity to any utilities shall be constructed in a manner that will not impair the physical integrity, use, or ongoing maintenance of those utilities. Upon learning of the existence and location of any utility omitted from or represented incorrectly in the Plans or Special Provisions, Contractor shall immediately notify County in writing. Support or protection of the omitted or incorrectly identified utility authorized by County will be paid for as provided in the "Changes" Section of these General Conditions. Contractor shall immediately notify County and the utility owner if any utility

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is disturbed or damaged. Contractor shall bear the costs of repair or replacement of any utility damaged if located in accordance with the "Location" Section, above.

13.6.3. Removal: Unless otherwise specified in the Contract Documents, Contractor shall remove all interfering portions of utilities represented in the Plans or Special Provisions as "abandoned" or "to be abandoned in place." Before starting removal operations, Contractor shall ascertain from County whether the abandonment is complete, and the costs involved in the removal and disposal shall be included in the Bid for the items of work necessitating such removals.

13.6.4. Relocation: When feasible, the owners responsible for utilities within the area affected by the work will complete their necessary installations, relocations, repairs, or replacements before commencement of the work by Contractor. When the Plans or Special Provisions indicate that a utility installation is to be relocated, altered, or constructed by others, County will conduct all negotiations with the owners and utility work will be done at no cost to Contractor, except as otherwise specified in the Contract Documents. Utilities that are relocated in order to avoid interference shall be protected in their position and the cost of such protection shall be included in the Bid for the items of work necessitating such relocation. After award of the Contract, portions of utilities not accurately described in the Plans and Special Provisions that are found to interfere with the work will be relocated, altered, or reconstructed by the utility owners. Alternatively, County may order changes in the work to avoid interference as provided by the "Changes" Section of these General Conditions. When the Contract Documents provide for Contractor to alter, relocate, or reconstruct a utility, all costs for such work shall be included in the Bid for the items of work necessitating such alteration, relocation, or reconstruction. Temporary or permanent relocation or alteration of utilities requested by Contractor for its convenience shall be its responsibility and Contractor shall make all arrangements and bear all costs.

13.6.5. Relocation of Service Connections: The utility owner will relocate service connections as necessary within the limits of the work or within temporary construction or slope easements. When directed by County, Contractor shall arrange for the relocation of service connections as necessary between the meter and property line, or between a meter and the limits of temporary construction or slope easements. Unless, otherwise specified in the Contract Documents, payment for the relocation of such service connections shall be in accordance with the "Changes" Section of these General Conditions, and will include the restoration of all existing improvements which may be affected thereby. Contractor may agree with the owner of any utility to disconnect and reconnect interfering service connections, and County will not be involved in any such agreement.

13.6.6. Notice: Contractor shall notify County of its schedule insofar as it affects the protection, removal, or relocation of utilities.

13.6.7. Cooperation: When necessary, Contractor shall so conduct its operations as to permit access to the work site and provide time for utility work to be accomplished during the progress of the work.

13.6.8. Utility Facilities on Project Site: If Contractor discovers unidentified utilities, Contractor shall immediately notify County and the utility owner in writing. Pursuant to Government Code Section 4215, Contractor shall be compensated for the costs of locating and repairing damage not due to failure of Contractor to exercise reasonable care, and of removing or relocating main or trunk line utilities located on the site and not identified in the Contract Documents with reasonable accuracy. Such compensation shall also cover the cost of Contractor's equipment necessarily idled during such work. Contractor shall not be assessed Liquidated Damages for delay in completion of the work if such delay was caused by the failure of County or utility owner to provide for removal or relocation of such utilities. This provision shall not be deemed to require compensation or excuse of Liquidated Damages when the presence of existing service laterals or appurtenances can be inferred from the presence of visible facilities such as buildings, meters, and junction boxes on or adjacent to the construction site.

13.6.9. Increase of Contract Time: Contractor shall not be entitled to additional time or compensation for delays attributable to utility relocations or alterations if such utility relocations or alterations are

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correctly located, noted, and completed. Contractor may be entitled to an extension of the Contract Time for unforeseen delays attributable to unreasonably protracted interference by utilities in performing work correctly represented in the Plans or Special Provisions. County will assume responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities within the area affected by the work if such utilities are not identified in the Contract Documents. Contractor will not be assessed Liquidated Damages for any delay caused by failure of County to provide for the timely removal, relocation, or protection of such existing facilities.

**13.7. SPACE AT SITE**

Contractor shall be allowed reasonable space at the work site and shall confine Contractor's operations to the assigned space.

**13.8. OPERATING HOURS AND SITE ACCESS**

Unless otherwise specified in the Contract Documents, normal operating hours are from 7:00 A.M. to 5:00 P.M. Work performed outside normal operating hours will require County's written approval.

**13.9. TRAFFIC CONTROL**

13.9.1. Contractor shall coordinate its traffic at the site with County. When a Traffic Control Plan (TCP) is required by the Contract Documents, Contractor shall submit an acceptable plan to County within 10 days after the Notice to Proceed is issued.

The TCP shall display and address, at a minimum:

- (a) Protection of existing improvements;
- (b) Maintaining access by County operations;
- (c) Methods to eliminate interference with existing facility operations and traffic in and out of the facility and operations area;
- (d) Proposed haul routes for delivery of materials;
- (e) Maximum speeds for each class of vehicle on each type of terrain, but in no event to exceed 15 mph on shared access roads and any crossing areas;
- (f) Access to work areas; and
- (g) Contractor's and Subcontractors' staging and material storage areas, including fuel storage procedures.
- (h) All motor-driven equipment using fuel shall have spark arresters.

13.9.2. Reckless driving shall not be tolerated, and all vehicles shall be operated at a safe speed at all times. If County determines that Contractor has violated the Traffic Control Plan or otherwise operated in an unsafe manner, County may suspend or prohibit the equipment operator(s) from any further work at the site. Repeated or severe incidents demonstrating the failure of Contractor to operate its vehicles safely shall constitute a material breach of this Contract and County may terminate Contractor's right to proceed with the work pursuant to the "TERMINATION FOR CAUSE" Section of the General Conditions.

**13.10. TEMPORARY OFFICE BUILDING AND TELEPHONE**

Contractor shall furnish and maintain a Class "A" Field Office for the exclusive use of the ENGINEER and its staff in accordance with the provisions of Section 15, "Class "A" Field Office of the Standard Specifications and Special Provisions.

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**13.11. TEMPORARY UTILITIES**

Contractor shall provide the necessary temporary utilities for construction use and bear the responsibility for their proper operation.

**13.12. SANITARY UNIT**

Contractor shall provide temporary toilets for County and Contractor's use. Contractor will maintain and service them in a sanitary condition through the construction of the Project.

**13.13. WATER**

Contractor shall furnish all water needed for the Project, including but not limited to potable (drinking) and construction/dust suppression water, unless otherwise specified in these Contract Documents.

**13.14. FIRE EXTINGUISHER**

Contractor shall provide fire extinguishers suitable for the Project and consistent with the factors enumerated in Title 19 of the California Code of Regulations, Section 565. These extinguishers shall be placed at strategic locations around the working area and kept accessible for use in case of fire. Contractor shall keep fire extinguishers in working order and shall remove them from the site at the end of construction.

**13.15. STORAGE AND WORKING SPACE**

Contractor may use the working area designated by County for material storage and working space. Any additional space shall be obtained by Contractor at Contractor's own expense. Locations for Contractor to store Contractor's equipment will be agreed upon during the pre-construction meeting.

**13.16. TRANSPORTATION AND HANDLING OF PRODUCTS**

Contractor shall:

1. Transport and handle products in accordance with manufacturer's instructions and applicable regulations;
2. Promptly inspect shipments to assure that products comply with requirements, quantities are correct, and products are undamaged; and
3. Provide equipment and personnel to handle products by methods to prevent damage.

**13.17. STORAGE AND PROTECTION OF PRODUCTS**

Contractor shall:

1. Store and protect products in accordance with manufacturer's instructions and applicable regulations, with seals and labels intact and legible;
2. Store sensitive products in weather-tight, climate-controlled enclosures;
3. Store hazardous materials in accordance with applicable regulations, including but not limited to those related to containment and protection of the materials and surrounding environment;
4. Store fabricated products on sloped supports above ground if such products are stored outdoors;
5. Cover products subject to deterioration with impervious sheet covering with ventilation to avoid condensation;
6. Provide equipment and personnel to store products by methods to prevent damage;
7. Arrange storage of products to permit access for inspections; and

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8. Periodically inspect to ensure products are undamaged and are maintained under specified conditions.

**13.18. REMOVAL OF TEMPORARY FACILITIES**

Contractor shall remove temporary toilets, storage sheds, and other facilities of a temporary nature from the Project site as soon as County determines progress of the work permits. Contractor shall recondition and restore portions of the site occupied by temporary facilities to a condition acceptable to County.

**13.19. REGULATORY COMPLIANCE REQUIREMENTS**

13.19.1. Permits

- (a) Contractor shall identify and obtain all permits necessary for the Project, including: permits, licenses, and certifications, including but not limited to all trade-related permits; permits required for environmental protection; construction permits; encroachment permits; permits required for the operation and storage of any equipment or regulated hazardous materials brought onsite; and permits required for dispensing and storing petroleum-related products. If necessary for the Project, Contractor shall obtain and submit to County a California Occupational Safety Health Agency (Cal-OSHA) Excavation Permit. Contractor shall be responsible for ensuring that all other permits necessary to complete the Project are in place consistent with federal, State, and local laws and regulations. Costs and fees associated with said permits, regardless of whether obtained by County, Contractor, or any other entity, shall be borne solely by the Contractor. If County incurs costs related to such permits, then County shall deduct such costs from any funds due or to become due to Contractor.
- (b) Contractor shall comply with the regulations or requirements of all permits, licenses, certifications, and regulations governing the Project. Any act or omission by Contractor that causes either Party to be in violation of any permit, licenses, certification, or regulation shall be deemed a material breach of this Contract by Contractor. County reserves the right to perform itself or through other contractors any work necessary to correct any violation or to bring the Project into compliance with any permit, license, certification, or regulation, and shall deduct the cost of such work from any funds due or to become due to Contractor.
- (c) Contractor shall maintain, at its job site office, copies of all permits, licenses, and certifications required for or governing the Project, including, as applicable, permits and approvals issued to County by the State Water Resources Control Board; the South Coast Air Quality Management District (“SCAQMD”) for dust control; and the SCAQMD and Local Enforcement Agency for refuse excavation.

13.19.2. Contractor Compliance with Applicable Law and Regulations: Contractor shall comply with all federal, State, County, and local codes, ordinances, regulations, and standards applicable to the Project. Contractor shall comply with all current regulatory criteria and standards. Contractor shall not be entitled to any additional compensation for work necessary to comply with legal or regulatory requirements effective at the time of bid opening.

13.19.3. Archaeological/Paleontological Resources

County may engage the services of an Archaeologist/Paleontologist (“A/P”) to monitor all or portions of the work.

- (a) The Contract Documents may require Contractor to retain an A/P. In such event, the following conditions apply:
- (i) A/P shall be acceptable to County. A County Certified Archaeologist and Paleontologist can be found at [Certified Archaeologists - County of Orange](#) and



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Certified Paleontologists - County of Orange. Regardless of whether A/P is selected from County's list, A/P shall meet all minimum qualifications listed in the "Qualifications for Certification of Archaeological and Paleontological Professionals" document provided at that website.

- (ii) Contractor shall submit the qualifications and references of A/P to County for verification at least 10 working days prior to any excavation or grading work. A/P shall be approved in writing by County at least 5 working days prior to the start of any excavation or grading work.
  - (iii) Unless otherwise agreed to in writing by County, A/P shall not be an employee of Contractor, any subcontractor currently under contract by Contractor (for any job), or any supplier to any project awarded or contracted to Contractor.
  - (iv) Contractor shall be compensated for all A/P expenses including all labor, materials, tools, equipment, and incidentals necessary for accomplishing the work in accordance with the Item(s) identified for A/P services in the Bid Schedule or, if not listed there, in accordance with the "Changes" Section of the General Conditions.
  - (v) A/P shall report exclusively to County. County may terminate the services of A/P at any time and at County's sole discretion, with no justification necessary to Contractor, and Contractor shall replace A/P with another individual or firm meeting the requirements of this Section. Under no circumstances will A/P's termination entitle Contractor to any additional time or payment under the "Changes" Section of these General Conditions.
  - (vi) All other provisions of this Section apply whether A/P is retained by County or by Contractor, and Contractor shall ensure that A/P complies with the provisions of these Contract Documents pertaining to A/P services.
- (b) Contractor shall cooperate with all A/P personnel. If A/P directs Contractor to suspend or stop work in a particular area, Contractor shall abide by such request immediately and not resume work until directed by County.
- (c) The A/P shall:
- (i) Conduct a literature and records search for recorded sites and previous surveys;
  - (ii) Conduct a field survey unless the entire work site has been previously surveyed and the survey documentation is acceptable to County;
  - (iii) Attend the pre-construction meeting to conduct or schedule separate pre-construction cultural and paleontological resources sensitivity training, and attend additional meetings or provide training as determined necessary by County. In the event of the discovery of specimens or artifacts, attend construction meetings until otherwise directed by County;
  - (iv) Conduct pre-construction cultural and paleontological resources sensitivity training for all staff involved in moving soil or working near soil disturbance. Training shall review the types of archaeological and paleontological resources that might be found, along with laws for the protection of the resources;
  - (v) If determined necessary by the A/P and approved by County, the A/P shall prepare a report on a subsurface test level investigation of archaeological resources collection or pre-grade paleontological salvage operation. The report shall evaluate the site including the significance of any finds (location, depth, nature, condition, and extent of the artifacts or specimens), recommended methodology of

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- salvage or mitigation and related cost estimates, and an analysis and catalogue of artifacts or specimens;
- (vi) Establish procedures for A/P sampling and resource surveillance and monitoring;
  - (vii) In cooperation with County, establish procedures for suspension or redirection of work to permit sampling, identification, and evaluation of possible resources.
  - (viii) During grading, excavation, or other ground-disturbing activities, if any evidence of paleontological, pre-historic, or historic cultural resources is uncovered, the following measures, unless otherwise specified in regulatory permit language, shall be taken:
    - (A) All below grade work shall stop within a 100-foot radius of the discovery. Work shall not continue until the discovery has been evaluated by the A/P.
    - (B) The A/P shall assess the find(s) and determine if they are of value. If the find(s) are of value then:
      - (1) The A/P shall draft a monitoring program and monitor all ground-disturbing activities related to the Project.
      - (2) A/P shall prepare all potential finds in excavated material to the point of identification.
      - (3) Significant finds shall be preserved as determined necessary by the A/P.
      - (4) Excavated finds shall be offered to County or its designee for curation on a first-refusal basis, then offered to a local museum or repository willing to accept the resource.
      - (5) Within 30 working days of completion of the end of earth moving activities, the A/P shall draft a report summarizing the finds, and shall include the inspection period, an analysis of any resources found, and the present repository of the items.
      - (6) All resulting reports shall be delivered to County and filed with the South Central Coastal Information Center at the California State University, Fullerton, or another institution if directed by County.
- (d) If Contractor uncovers any burial grounds or remains, ceremonial objects, petroglyphs, or archaeological, paleontological, or other artifacts or specimens of like nature within the construction area, Contractor shall immediately notify the County 's onsite representative of Contractor 's finds and shall modify the construction operations so as not to disturb the finds pending further instructions from County.
  - (e) Discovery of human remains:
    - (i) In accordance with Section 7050.5 of the California Health and Safety Code, if human remains are found, no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the County of Orange Sheriff-Coroner and/or other applicable coroner and law enforcement agency ("Coroner's Office") has determined the appropriate treatment and disposition of the human remains. The Coroner's Office shall be notified within 24 hours of the discovery.

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- (ii) If the Coroner's Office determines that the remains are or are believed to be of Native American origin, the Coroner's Office will notify the California Native American Heritage Commission (NAHC).
- (iii) In accordance with Section 5097.98 of the California Public Resources Code, the NAHC must notify those persons it believes to be the most likely descended from the deceased Native American. The descendants shall be granted access to the site to complete their inspection as quickly as possible. The designated Native American representative would then determine, in consultation with County, the treatment and disposition of the human remains.
- (f) Should the finds, or notification of finds, result in delays or extra work, payment will be allowed in accordance with the "Changed Conditions" subsection of the "Conditions Affecting the Work" Section of these General Conditions. However, Contractor shall not be entitled to damages, additional payments, or extensions of time where the Contractor could have avoided delays by any reasonable means.
- (g) Unless otherwise required by law, any and all finds shall remain the property of County and not become the property of any other person or entity.

13.19.4. Surface Water Protection

- (a) Work at *active landfills* is subject to the requirements of the National Pollutant Discharge Elimination System ("NPDES") storm water regulations, specifically Industrial General Permit ("IGP") Order No. 2014 -0057-DWQ, as well as site-specific Waste Discharge Requirements ("WDR"). Work at active landfills may also be subject to Construction General Permit ("CGP") Order No. 2012 -0006-DWQ as indicated in the Special Provisions. NPDES regulations require the implementation of an IGP Stormwater Pollution Prevention Plan ("IGP SWPPP") and may additionally require a CGP Stormwater Pollution Prevention Plan ("CGP SWPPP") in conjunction with work at such sites.
- (b) Work at *closed, abandoned, or inactive ("CAI") landfills* is subject to the CGP and site-specific WDR. NPDES regulations require the implementation of a CGP SWPPP in conjunction with work at such sites.
- (c) All other work *not sited at an active or closed landfill* is subject to the CGP, and requires the implementation of a CGP SWPPP.
- (d) Where the nature and location of the work require compliance with the IGP, County has prepared an IGP SWPPP. Contractor is responsible for obtaining copies of the site-specific WDR and IGP SWPPP from County. Copies of the IGP and related documents may be found at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/industrial.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.shtml).
- (e) Where the nature and location of the work require compliance with the CGP, Contractor is responsible for preparing and implementing a CGP SWPPP. Copies of the CGP and related documents may be found at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/constpermits.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml).
- (f) Additionally, in a letter dated August 31, 2011, the Santa Ana Regional Water Quality Control Board issued a Water Quality Standards Certification pursuant to the federal Clean Water Act ("CWA") (also known as the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.), Section 401. The Certification requires that discharge from the Project will comply with CWA Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent

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Standards). The discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges that Have Received Water Quality Certification."

13.19.5. Preparation of CGP SWPPP

- (a) Where the nature and location of the work requires Contractor to comply with the CGP, Contractor shall develop a CGP SWPPP in accordance with the CGP and include references to the California Stormwater Quality Association ("CASQA") Stormwater Best Management Practices ("BMPs") Handbook for BMPs to be implemented during the course of construction. By submitting its Bid, Contractor represents having read and understood the requirements of the CGP. Although Contractor is required to prepare and submit a SWPPP, Contractor will not be required to prepare and submit Permit Registration Documents (PRDs) for the Project site. Additionally, Contractor will not be required to submit any CGP-required documentation to SMARTS. Contractor shall submit to County all CGP-required documentation (e.g., inspection reports, rain event action plans, monitoring reports, annual reports, site photos, and SWPPP amendments) and Contractor may not proceed with any earth-disturbing work prior to County's approval of the CGP SWPPP, which approval will not be unreasonably delayed.
- (b) As applicable, Contractor shall employ a Qualified SWPPP Developer ("QSD") to prepare the CGP SWPPP, which shall include Contractor's specific approach for the Project to ensure compliance with the CGP. Contractor's final CGP SWPPP shall include a site-specific Construction Site Monitoring Program ("CSMP"). The CSMP shall define and identify the locations of specific BMPs to be implemented by Contractor during the various phases and staging of construction (including but not limited to: installation and maintenance of interim erosion or sediment controls, whereas the Erosion Control Plan may reflect only the post-construction location of these BMPs; equipment staging area BMPs; and interim stockpile management). The CGP SWPPP shall demonstrate compliance with all requirements of the CGP throughout the duration of the project.
- (c) Contractor shall submit to County one digital copy of the draft and final CGP SWPPP and a minimum of three hard copies for the draft and final, each placed in a three-ring binder with separators and tabs. Review and acceptance by County is for general compliance purposes only and shall not be construed by any party as relieving Contractor from any responsibility or liability for conforming to the requirements of the CGP. County may require that the CGP SWPPP be amended and resubmitted to County as it determines necessary.
- (d) All costs associated with Contractor's review of the CGP and preparation of the CGP SWPPP and the CSMP shall be included in Contractor's Bid.

13.19.6. SWPPP Implementation & Compliance

- (a) Contractor is responsible for implementing and complying with the IGP SWPPP and/or CGP SWPPP, as applicable to the nature and location of the work. Contractor's implementation and compliance activities shall include but not be limited to: installation and maintenance of BMPs (interim and final); preparation and implementation of Rain Event Action Plans (REAPS); rainfall and storm water turbidity and pH monitoring, sampling and analysis as required by the CGP; sampling and analysis to include constituents in the IGP in the event of any breach, malfunction, leakage, or spill; sampling and analysis for constituents in condition 9.c of the existing Monitoring and Reporting Program (RWQCB Order No. R8-2010-0017) in the event of groundwater containment system breach, malfunction, leakage, or spill; daily, weekly, and quarterly inspections and reporting; and all other activities required to eliminate both storm water and non-storm

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water discharges as required by the IGP/CGP. Contractor shall designate an independent Qualified SWPPP Practitioner (QSP), as defined by the IGP/CGP, who will be responsible for monitoring Contractor 's compliance with IGP/CGP requirements on the Project at all times.

- (b) Contractor shall be responsible for providing all reports required by the IGP/CGP (monitoring, inspection, REAP, annual reports, etc.) to the County for review. Contractor shall submit all reports digitally with at least three hard copies to the County.
- (c) Contractor's designated QSP shall review and make recommendations to the County to amend the appropriate SWPPP as needed during the course of work to reflect actual construction progress and construction practices.
- (d) Contractor shall comply with all the requirements identified in the IGP/CGP. Non-adherence with the requirements identified in the IGP/CGP may constitute a violation of the Clean Water Act and the Porter-Cologne Water Quality Control Act and may be grounds for enforcement action by the RWQCB. Any fines incurred by County due to Contractor's noncompliance with the requirements of the IGP/CGP shall be back-charged by County to Contractor.
- (e) Contractor 's compliance with IGP/CGP includes, but is not limited to:
  - (i) Developing a SWPPP to conform to a Risk Level 2 and Contractor 's actual construction practices;
  - (ii) Tasks to be performed by QSP, including administering, implementing, maintaining, and ensuring adequate functioning of the various water quality control measures identified within the applicable SWPPP during construction including all Numeric Action Level (NAL) and Numeric Effluent Limitation (NEL) sampling, monitoring, and reporting requirements statutorily required for the determined Risk Level of the Project site;
  - (iii) Providing and maintaining all documentation (at the work site) and administration for the entire Contract period;
  - (iv) Performing all work required for compliance with the requirements of the IGP/CGP including preparation of all REAPs, and constructing effective treatment control BMPs, i.e.: contingency basins, chemical treatments, etc. (if applicable); and
  - (v) Providing all labor, tools, equipment, materials, and incidentals for any additional BMPs not shown or identified in the applicable SWPPP which may be required to comply with the requirements of the IGP/CGP or when requested by the County.
- (f) Contractor shall not be entitled to any time extensions or compensation for any cost due to any action required as a result of Contractor's failure to comply with those provisions of the applicable SWPPP within Contractor's control. Contractor shall be responsible for ensuring that its Subcontractor(s) comply with the provisions of this Section. Contractor shall be liable for any action, fine, or civil liability imposed by the regulatory agencies for incidents of noncompliance that are within Contractor 's area of responsibility.

**13.20. HAZARDOUS OR CONTAMINATED MATERIALS**

13.20.1. Contractor is responsible for proper handling, storage, transportation, and disposal (per all federal, State and local regulations) of any hazardous wastes, liquid wastes, or nuisance wastes (for example, finely divided, powdery, or dusty materials, strong odors, etc.) that it generates while working on County 's behalf.

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13.20.2. As provided by the "Contract Time" Section of the Agreement, Contractor must submit for County's review an Emergency/Contingency Plan for handling spills of hazardous, liquid, or nuisance materials while working on County's behalf. The Plan shall include proper handling, removal, and disposal of these materials per all applicable federal and State requirements. The Emergency/Contingency Plan shall also include emergency notification to County and any other notifications as required by law. Contractor shall not commence work at the site until County has approved Contractor's Emergency/Contingency Plan.

13.20.3. Contractor must restore any spill-damaged areas to their original condition in a correct and timely manner and to the satisfaction of County.

13.20.4. Contractor shall remove and dispose of any materials that become contaminated directly or indirectly as a result of the Contractor's operations, whether or not such contamination involves hazardous materials. The removal and disposal of any contaminated materials associated with this Contract shall be completed by the Contractor to the satisfaction of County at no additional cost to the County. Contractor shall execute all necessary manifests, bills of lading, or similar documents ("Manifests") concerning such contaminated materials which shall identify Contractor as the generator of the materials.

13.20.5. Prior to shipment, Contractor shall provide copies of all Manifests to the County to verify that Contractor has arranged for the proper disposal of hazardous materials to a licensed, permitted facility. Contractor shall provide to County proof of proper disposal of such materials. If Manifests and proof of proper disposal are not submitted, County may withhold or deduct directly the estimated cost of removal and disposal from amounts otherwise due Contractor, plus a 5% administration fee, until Contractor submits Manifests and proof of disposal.

13.20.6. County has the authority to perform inspections of the Contractor's work area at any time to ensure Contractor is compliant with all applicable regulations.

13.20.7. Upon written notice from County, if Contractor does not remove contaminated materials immediately, County may remove, process, transport, and certify the material as stated above and all costs incurred by County for removal and disposal, plus a 5% administrative fee, will be deducted directly from amounts otherwise due Contractor. If County performs such decontamination, Contractor shall sign any Manifests for that material as the generator.

13.20.8. Contractor shall train its employees, as required by OSHA and California Code of Regulations Title 8, in the proper handling, storage, transportation and disposal of hazardous materials. Contractor shall train its employees to follow the Emergency/Contingency Plan and know immediate response procedures should a release occur.

13.20.9. Contractor shall keep appropriate emergency response equipment and materials available in the working area at all times.

13.20.10. Maintenance Facilities and Work Area: Contractor shall maintain its equipment in an area designated by County for such purposes. Certain maintenance areas have been designated at the County facility for the purpose of maintaining County equipment. Contractor may utilize a County maintenance area only with the express permission of the County. County may designate a different maintenance area for Contractor's use at any time, and Contractor will not be entitled to a Change Order as the result of such relocation.

13.20.11. Contractor's maintenance activities shall conform to the provisions of the "Regulatory Compliance Requirements" Section of the General Conditions. Contractor shall keep the facility clean, maintain clean equipment, and dispose of any contaminated materials in accordance with the "Hazardous or Contaminated Materials" Section, above. Contractor shall store all maintenance materials in accordance with the "Contractor's Storage and Protection of Products" Section.

13.20.12. Contractor shall be responsible for any damage it causes to the designated area and for restoring the area to its original condition when Contractor ceases using the area. Contractor shall repair any damage and perform such restoration. If Contractor fails to perform such repair or restoration in a timely manner,

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County may perform that work and Contractor shall reimburse County for repair or restoration costs plus a 5% administrative fee.

**13.21. FUGITIVE DUST EMISSION CONTROL**

Contractor shall comply with SCAQMD Rule 403 including, if applicable, to prepare and submit to County and for acceptance by SCAQMD a Fugitive Dust Emission Control Plan, as required for Project work. Contractor shall also notify County of any condition that could lead to noncompliance with the permit Rule 403 requirements. If a Fugitive Dust Emissions Control Plan is required pursuant to Rule 403, Contractor may not conduct any activities governed by SCAQMD Rule 403 until County has accepted Contractor's Plan and the Plan is accepted by SCAQMD. If Contractor fails or refuses to immediately correct any noncompliance with the provisions of this Section, County may terminate Contractor's right to proceed with the work and County may exercise its rights under the "Termination for Cause" Section of these General Conditions.

Whether or not Contractor's right to proceed with the work is terminated, Contractor and the Contractor's sureties shall be liable for any damage to the County resulting from Contractor's refusal or failure to complete the work within the specified time.

Contractor shall not be entitled to any time extensions or compensation for any cost due to any such action as a result of Contractor's failure to comply with the provisions of the accepted Fugitive Dust Emission Control Plan. Contractor shall be responsible for ensuring that all Subcontractor(s) comply with the provisions of this Section. Contractor shall be liable for any action or fine imposed by the SCAQMD on those incidents of noncompliance that are within the Contractor's area of responsibility.

**13.22. BIOLOGICAL AND HABITAT PROTECTION**

County will inform Contractor of any biological resources that would or could be impacted by the Project, and specify any required mitigation measures or procedures to protect those resources during construction. Contractor shall be responsible for complying with these protection measures, and for ensuring that all Subcontractors also comply. County has the authority to perform inspections of Contractor's work area at any time to ensure that these measures or procedures are being followed.

**13.23. RED IMPORTED FIRE ANT INTERIOR QUARANTINE OF ORANGE COUNTY**

Contractor shall be responsible for strict compliance with the quarantine of the County of Orange for the red imported fire ant ("RIFA") as defined in California Code of Regulations, Title 3, Section 3432 and incorporated herein by reference. Contractor shall arrange for any California Department of Food and Agriculture inspections, certifications, or approvals necessary to perform any portion of the Project. A copy of the form used to request such inspections is available from OC Planning. Contractor shall bear the full financial responsibility of any assessed fine or penalty resulting from Contractor's violation of any law, regulation, or permit related to RIFA control. Contractor shall submit to County for County's approval an acceptable detailed incident report within 5 working days of the date of any violation or not later than 5 working days from the date of the notification of the violation, whichever is later.

**13.24. COMPLIANCE WITH "PERFORMANCE" SECTION**

Contractor shall not be entitled to any time extensions or compensation for any cost due to any action required as a result of the Contractor's failure to comply with the requirements of this "Performance" Section. Contractor shall be responsible for ensuring that the Contractor's Subcontractor(s) comply with the provisions of this Section. Contractor shall be liable for any fine or penalty imposed by any regulatory agency or for any other cost incurred by County as a result of regulatory noncompliance arising from any action or inaction of Contractor or its Subcontractor(s).

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**14. CHANGES**

**14.1. COST REDUCTION INCENTIVE**

14.1.1. As authorized by Public Contract Code Section 7101, Contractor may submit to County written proposals for modifying the Plans, Special Provisions, or other requirements of the Contract Documents for the sole purpose of reducing the total cost of construction. The cost reduction proposal shall not impair in any manner the essential functions or characteristics of the Project, including, but not limited to, service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards.

14.1.2. Cost reduction proposals shall contain the following information:

- (a) Descriptions of both the work called for by the Contract Documents and the proposed changes.
- (b) Itemization of the Contract Document requirements that must be changed if the proposal is adopted.
- (c) Detailed estimate of the cost of performing the work under the existing Contract Documents and under the proposed change.
- (d) Prediction of the effects the proposed change would, if adopted, have on other costs to County, such as County-furnished property costs, cost of future construction, and costs of maintenance and operation.
- (e) Statement of the time by which a Change Order adopting the proposal must be issued in order to obtain the maximum cost reduction.

14.1.3. The provisions of this "Cost Reduction Incentive" Section shall not be construed to require County to consider any cost reduction proposal that may be submitted hereunder; County will not be liable to Contractor for failure to accept or act upon any cost reduction proposal submitted pursuant to this Section; and County will not be liable to Contractor for any delays to the work attributable to any such proposal. If a cost reduction proposal is similar to a change in the Plans or Special Provisions, that change is under consideration by County for the Project at the time said proposal is submitted, or if such a proposal is based upon or similar to Standard Specifications, Reference Specifications, or Standard Plans adopted by County after the advertisement for the Project, County will not accept such proposal and reserves the right to make such changes without compensation to Contractor under the provisions of this Section.

14.1.4. Contractor shall continue to perform the work in accordance with the requirements of the Contract Documents until an executed Change Order incorporating the cost reduction proposal has been issued. If an executed Change Order has not been issued by the date upon which Contractor's cost reduction proposal specifies that a decision should be made, such cost reduction proposal shall be deemed rejected.

14.1.5. County shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. County may accept documentation that varies from the requirements in subsection (b), above, if in its sole and absolute discretion, County determines that the alternate documentation is sufficient to allow County to evaluate the cost reduction proposal. In determining the estimated net savings, County reserves the right to disregard the Bid Schedule or Schedule of Values if, in the sole judgment of County, such schedules do not represent a fair measure of the value of work to be performed or to be deleted. The decision of County as to the acceptance or rejection of such proposals, and as to the estimated net savings in construction costs, shall not be subject to the "Disputes" Section of these General Conditions.

14.1.6. County reserves the right to require Contractor to pay County's costs of investigating a cost reduction proposal submitted by Contractor as a condition of considering such proposal. Where such a condition is imposed, Contractor shall indicate Contractor's acceptance thereof in writing, and such acceptance shall constitute full authority for County to deduct amounts thereby payable to County from any monies due or that may become due to Contractor under the Contract Documents.



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14.1.7. If Contractor's cost reduction proposal is accepted in whole or in part, such acceptance will be by a Change Order, which shall specifically state that it is executed pursuant to this Section. Such Change Order shall incorporate the changes in the Plans and Special Provisions that are necessary to permit the cost reduction proposal or such part of it as has been accepted to be put into effect, and shall include any conditions upon which County's approval is based if the approval of County is conditional. The Change Order shall also set forth the net savings in the cost of performing the work attributable to the cost reduction proposal effectuated by the Change Order and shall further provide that Contractor be paid 50% of the net savings in construction costs as determined by County.

14.1.8. Acceptance of the cost reduction proposal and performance of the work thereunder shall not extend the time for completion of the Project unless such extension is specifically provided for in the Change Order authorizing the use of the cost reduction proposal.

14.1.9. The amount specified to be paid to Contractor in the Change Order that effectuates a cost reduction proposal shall constitute full compensation to County for the cost reduction proposal and for the performance of the work thereunder pursuant to the Change Order.

14.1.10. County expressly reserves the right to adopt a cost reduction proposal for general use on contracts let or administered by County when it determines that said proposal is suitable for application to other contracts. When an accepted cost reduction proposal is adopted for general use, only the Contractor who first submitted such proposal will be eligible for compensation pursuant to this Section, and in that case, only as to those contracts awarded to Contractor prior to submission of the accepted cost reduction proposal and as to which such cost reduction proposal is also submitted and accepted. Cost reduction proposals identical or similar to previously submitted proposals will be eligible for consideration and compensation under the provisions of this Section if the identical or similar previously submitted proposals were not adopted for general application to other contracts let or administered by County. Cost reduction proposals accepted by County shall become the intellectual property of County. Subject to the provisions contained herein, the State or any other public entity shall have the right to use any accepted cost reduction proposal without obligation or compensation of any kind to Contractor.

## **14.2. CHANGE ORDERS**

County may, at any time, by written order, and without notice to the sureties, make changes to the Contract Documents if within the general scope of the Project.

14.2.1. County's Change Order Requests: County shall issue a written request ("Change Order Request") which shall set forth in reasonable detail the nature of the change and the type of quote requested (lump sum or time-and-materials with a not-to-exceed amount) and whether such change involves additions, deletions, or other revisions to the Contract Documents. Within 7 days of receiving County's Change Order Request, Contractor shall present to County a detailed proposal for change in Contract Price and/or a change in the Contract Time from that set forth in the Agreement. If such change causes an increase or decrease in Contractor's cost or the time required for performance of the work, an equitable adjustment shall be made and the Contract Price and/or Contract Time modified in writing accordingly by a Change Order.

14.2.2. Contractor's Request for Change: If Contractor believes that a change in the Contract Documents, including any change in Contract Price or Contract Time, is appropriate, it shall submit, within 7 days of the event giving rise to the proposed change, a written request ("Request for Change") to County to issue a Change Order. Timely notice to County is essential to County's identification, prioritization, and response to claimed changes, including any claimed delays, and Contractor's failure to give County timely notice of such claims shall be presumed to be prejudicial to County. Contractor's failure to submit a notice to County within 7 days after the date Contractor first recognized, or should have recognized in the exercise of ordinary care, any event giving rise to any proposed change shall constitute a waiver by Contractor of any request for or entitlement to an increase in the Contract Price or Contract Time.

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Contractor's Request for Change shall include a description of the proposed change in the Contract Documents, the event or circumstance giving rise to the need for the change, and any proposed change in the Contract Price and/or Contract Time associated with the Request for Change. If the Request for Change includes a proposal to increase the Contract Time, Contractor shall include a description of: (1) the cause(s) for the proposed extension of time, including but not limited to causal events and responsible persons and organizations; (2) the dates (or anticipated dates) of performance of the changed work; (3) activities on the Accepted Project Schedule affected by the change, any new activities created by the change, and their relationship with existing activities; (4) the anticipated extent of any claimed increase to the Contract Time; and (5) recommended action to avoid or minimize the increase. If County agrees that a change in the Contract Documents is appropriate, County may use the same options described in the "Lump Sum Change Orders" and "Time-and-Materials Change Orders" Sections below in response to Contractor's Request for Change. Contractor waives all claims as to which it has not provided County with notice through a Request for Change in accordance with this Section. In the event of a claim or litigation arising from any disagreement involving Contractor's Request for Change, Contractor's compensation (if any) shall be limited to an amount calculated in accordance with the "Time-and-Materials Change Orders" Section below.

14.2.3. Lump Sum Change Orders: For a lump sum change, Contractor's quote shall be itemized and supported with sufficient substantiating data (including but not limited to detailed subcontractor estimates, supplier quote sheets, prices, invoices, and rate sheets) to permit evaluation with respect to the following costs:

- (a) Labor (show hourly rate multiplied by estimated hours);
- (b) Payroll taxes on labor;
- (c) Materials, supplies, and equipment (include unit costs and estimated quantities);
- (d) Machinery and equipment rental (include rental rates and estimated durations);
- (e) Sales, use, or similar taxes related to the work;
- (f) Other Items: County may authorize other items that may be required for the changed work. Such items include labor, services, material, and equipment that are different in their nature from those required for the work and that are of a type not ordinarily available from Contractor or any of its subcontractors;
- (g) Reasonable overhead and profit associated with the change, not to exceed 15% on above items if Contractor uses its own forces to perform changed work. If Contractor's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of 15% on above items and Contractor shall be entitled to a maximum of 6% on above items for its overhead and profit on the changed work. County will pay only one overhead and profit markup of 6% for Contractor and one markup of 15% for the subcontractor in connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work; and
- (h) Premiums for all bonds and insurance (the maximum amount for this shall be 3% of above items and Contractor shall provide documentation demonstrating it will actually incur an increase in insurance costs directly attributable to the change).

County may reject Contractor's lump sum proposal, may negotiate with Contractor a revision of the requested change and associated lump sum proposal, or may approve the Contractor's lump sum proposal and incorporate it into a Change Order.

14.2.4. Time-and-Materials Change Orders: For a time-and-materials change, County shall determine the adjustment to the Contract Price on the basis of actual costs as follows:

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- (a) Cost of materials and supplies (show actual unit cost multiplied by actual quantity). The cost of materials shall be at invoice price or the lowest current price at which such materials are locally available and delivered to the job site in the quantities involved, plus freight and delivery. County reserves the right to approve materials and sources of supply or to supply materials to Contractor if necessary for the progress of the work. No markup for overhead and profit shall be applied to any material provided by County.
- (b) Tool and equipment rental. County will not pay for the use of tools that individually have a replacement value of \$200 or less. Regardless of ownership, the equipment rental rates shall be based upon the edition of equipment rental rates published by the Caltrans Division of Construction, or locally available rate or other reference acceptable to County current as of the date the changed work is performed. The rental rates paid shall include the cost of fuel, oil lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidents. Necessary loading and transportation costs for equipment used on the changed work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to County than holding it at the work site, it shall be returned, unless Contractor elects to keep it at the work site at no expense to County. All equipment shall be acceptable to County, in good working condition, and suitable for the purpose for which it is to be used. Manufacturers' ratings and approved modifications shall be used to classify equipment and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer. The reported rental time for equipment already at the work site shall be the duration of its use on the changed work, commencing at the time it is first put into actual operation on the changed work, plus the time required to move it from its previous site and back or to a closer site. Contractor shall submit invoices for tool and equipment rental costs. If Contractor does not submit invoices, County may establish the rental costs at the lowest price which was current at the time the changed work was performed.
- (c) Cost of labor (show actual total hourly rate multiplied by actual hours spent on changed work). The costs of labor shall not exceed the wages prevailing for each craft or type of workers performing the changed work at the time the changed work is done. The costs of labor shall include the actual basic hourly rate, plus employer's actual regular payments for health and welfare, pension, vacation or holiday, training, and other direct costs resulting from federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements and shall be supported by payroll records. The costs of labor shall not include any amount for bonuses or extraordinary vacation or holidays. The use of a labor classification that would increase the changed work cost will not be permitted unless Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. The labor cost for foremen shall be proportional to all of their assigned work and only that applicable to changed work shall be paid. Non-direct labor costs including superintendence shall be considered part of the markup for overhead and profit below.
- (d) Sales taxes on materials (percentage of item (a), above).
- (e) Payroll tax on labor (percentage of item (c), above).
- (f) Insurance (workers' compensation and liability insurance).
- (g) Other Items. County may authorize other items that may be required for the changed work. Such items include labor, services, material, and equipment that are different in their nature from those required for the work and that are of a type not ordinarily available from Contractor or any of its subcontractors. Contractor shall submit invoices covering all such items in detail.

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- (h) Overhead and profit. Contractor shall receive a maximum 15% for overhead and profit on above items if Contractor uses its own forces to perform changed work. If Contractor's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of 15% on above items for its overhead and profit and Contractor shall be entitled to a maximum of 6% on above items for its overhead and profit on the changed work. County will pay only one overhead and profit markup of 6% for Contractor and one markup of 15% for the subcontractor in connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work. County will not pay any overhead or profit for omitted work.
- (i) Bond (1% of above items).

Contractor shall keep and present, in such form as County may prescribe, an itemized accounting of the costs or savings attributable to the changed work, together with appropriate supporting data. The accounting shall include a daily job record in quadruplicate containing a detailed description of: the labor (workers, classifications, and hours worked); quantities of materials used; equipment used (identifying the equipment and the hours of use); and any other services and expenditures in such detail as County may require. Upon being signed and agreed to by County and Contractor at the end of each day's performance, the daily job record will become the basis for payment for the changed work. But such agreement shall not preclude the County from thereafter conducting an audit and adjusting the basis for payment. Failure by Contractor to submit the daily report by the close of the next working day may constitute a waiver of any rights for that day. Upon request by County, Contractor shall permit County to inspect Contractor's original estimate for the Project, subcontract agreements, or purchase orders relating to the change. Upon completion of the changed work ordered to be performed on a time and materials basis, County will then issue a unilateral Change Order adjusting the Contract Price according to the actual costs incurred and, if appropriate, adjusting the Contract Time.

14.2.5. Unilateral Change Orders: If County and Contractor cannot reach an agreement on a proposed change, County may issue a Unilateral Change Order directing work on a time-and-materials basis as set forth above.

14.2.6. No Extension of Contract Time without Critical Path Delay: Contractor shall not be entitled to an extension of the Contract Time unless Contractor demonstrates a delay to the critical path shown on the most recent Accepted Project Schedule.

14.2.7. No Additional Compensation for Early Completion: Nothing contained in the Contract Documents creates any contractual right, express or implied, on the part of Contractor to early completion of the Project. Under no circumstances shall County owe additional compensation to Contractor for Contractor's inability to achieve completion of the Project before the expiration of the Contract Time, whether or not such inability is caused by the acts or omissions of County or any other party for which County is responsible, regardless of any approval by County of the Accepted Project Schedule.

14.2.8. Credits: Regardless of whether the equitable adjustment associated with changed work is recorded through a lump sum or time-and-materials Change Order: (1) if the net value of a change to the work results in a credit from Contractor, then the credit given shall include costs as well as overhead and profit; or (2) if the net value of a change to the work results in additional costs, then overhead and profit will only be applied to the amount by which the added costs of the change exceed the credited amount. When a change proposed by County results in the deletion of work and the County and Contractor are unable to agree upon the cost, overhead, and profit thereof, the County's estimate of the cost, overhead, and profit shall be deducted from the Contract Price by a Change Order unless within 15 days of receiving the County's estimate Contractor presents proof that the County's estimate is in error.

14.2.9. Overhead and Profit: Contractor shall receive a maximum 15% for overhead and profit on above items if Contractor uses its own forces to perform changed work. If Contractor's subcontractor's forces perform changed work, then the subcontractor shall be entitled to a maximum of 15% on above items for

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its overhead and profit and Contractor shall be entitled to a maximum of 6% on above items for its overhead and profit on the changed work. County will pay only one overhead and profit markup of 6% for Contractor and one markup of 15% for the subcontractor in connection with changed work, regardless of the actual number of intervening subcontractors involved in the changed work. County will not pay any overhead or profit for omitted work.

Regardless of whether the equitable adjustment associated with changed work is recorded through a lump sum or time-and-materials Change Order, the amount County pays for overhead and profit shall be Contractor's only compensation for: all costs of supervision, superintendence, and scheduling; wages of timekeepers, watchmen, and clerks; tools individually valued at \$200 or less; incidentals; any and all field and home office expenses; costs of estimating and preparing change orders; all impact costs including but not limited to lost productivity associated with "learning curves," "productivity factors," and "ripple effects"; and all other expenses not included in itemized costs.

14.2.10. Compensation for Delay: Contractor shall be compensated for its substantiated actual, direct expenses, together with the markup for overhead and profit described in "Overhead and Profit" above, resulting from delay for which County is responsible. Under no circumstances shall County compensate Contractor for extended home office overhead or profit based on an *Eichleay* formula" or any other proportionate allocation of Contractor's overhead expenses or profit, all of which shall be deemed to have already been included in the above-described markup.

14.2.11. Unit Price Changes: If a change is ordered in an item of work covered by a Contract Unit Price, and such change does not involve substantial change in character of the work from that shown on the Plans or Special Provisions, then an adjustment in payment will be made. This adjustment will be based upon the increase or decrease in quantity and the Contract Unit Price. If the actual quantity of an item of work covered by a Contract Unit Price and constructed in conformance with the Plans and Special Provisions varies from the Bid quantity by 25% or less, payment will be made at the Contract Unit Price. If the actual quantity of the item of work varies from the Bid quantity by more than 25%, then payment will be made as described in Subsection (a) "Increases of More than 25%," or Subsection (b) "Decreases of More than 25%," below, as appropriate. If a change is ordered in an item of work covered by a Contract Unit Price, and such change involves a substantial change in the character of the work from that shown on the Plans or Special Provisions, an adjustment in payment will be made as described in Subsection (c) "Substantial Change in Character of the Work," below.

- (a) Increases of More than 25%: Should the actual quantity of an item of work covered by a Contract Unit Price and constructed in conformance with the Plans and Special Provisions exceed the Bid quantity by more than 25%, then payment for the quantity in excess of 125% of the Bid quantity will be made on the basis of an adjustment in the Contract Unit Price mutually agreed to by the Contractor and County or, at the option of County, on the basis of Time and Materials Change Orders, described above. However, in no event will payment be more than would be paid for the actual quantity at the Contract Unit Price.
- (b) Decreases of More than 25%: Should the actual quantity of an item of work covered by a Contract Unit Price, and constructed in conformance with the Plans and Special Provisions, be less than 75% of the Bid quantity, then an adjustment in payment will not be made unless Contractor requests an adjustment in writing and adequately demonstrates that the reduction in quantity has increased Contractor's per-unit cost of performing the work item. If Contractor so requests, payment will be made on the basis of an adjustment in the Contract Unit Price mutually agreed to by Contractor and County, or at the option of County, on the basis of Time and Materials Change Orders, described above. However, in no case will payment be less than would be made for the actual quantity at the Contract Unit Price nor more than would be paid for 75% of the Bid quantity at the Contract Unit Price.

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- (c) Substantial Change in Character of Work: If a change in an item of work covered by a Contract Unit Price involves a substantial change in the character of work from that shown on the Plans or Special Provisions, then an adjustment to the payment for the Work may be made by mutual agreement of Contractor and County as an adjustment to the Contract Unit Price, as a Lump Sum Change Order, or at County's option as a Time and Materials Change Order, as described above.

**14.3. DELAYS DUE TO WEATHER AND FORCE MAJEURE**

14.3.1. Subject to the other provisions of these Contract Documents, Contractor may be entitled to an extension of the Contract Time, but no damages or increase in the Contract Price, for delays arising from the following causes when they occur beyond Contractor's or its Subcontractors' control, fault, or negligence:

- (a) Acts of God (tornadoes, fires, hurricanes, blizzards, earthquakes, typhoons, or floods), war, civil unrest, trade embargoes, labor disputes, or strikes necessitating stoppage of work; or
- (b) Weather days necessitating stoppage of work in excess of the number of anticipated weather days specified in the "Contract Time" Section of the Agreement. The Contract Time shall be deemed to take into account the number of working days specified in the Agreement ("anticipated weather days") that stoppage of work can reasonably be expected at the Project site due to rain or other adverse weather conditions, and Contractor agrees that the number of weather days indicated in the Agreement is a reasonable approximation of the number of weather days that may impact the work. Contractor's construction schedule shall include this number of anticipated weather days. Time extensions for weather days will only be considered when the number of days in question exceeds the number of days specified in the Agreement, those days impact a critical path element of the Project, and Contractor cannot redirect work efforts to unaffected portions of the Project. If Contractor believes that the progress of the work has been adversely affected by weather, Contractor shall submit a written request for extension of time to County.
- (c) A written request for any extension of the Contract Time shall be delivered to County within 7 days of the first date of commencement of each delay. Contractor's failure to submit such request within the time specified will be considered grounds for refusal by County to consider such request.
- (d) If the Project involves the construction of a permanent structure, no extensions of time will be made for weather after the principal portions of the work are enclosed. County shall determine when the structure is "enclosed" for purposes of this provision.
- (e) Extensions of time due to weather or force majeure, when granted, will be on the basis of 1.4 calendar days credit for every working day lost, with the credit for each separate extension rounded off to the nearest whole calendar day. A "working day lost" will not include any day during which at least 60% of the normally scheduled workforce is able to work for at least five hours of the day.

14.3.2. The Contract Time includes a specified number of weather days anticipated for stoppage of work due to rain or other adverse weather conditions. Subject to the other provisions of these Contract Documents, Contractor may be entitled to designate a contract day as a weather day as follows:

- (a) A written request shall be delivered to County within 7 days of the first date of commencement of each requested weather day. Contractor's failure to submit such request within the time specified will be considered grounds for refusal by County to consider such request.

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- (b) If the Project involves the construction of a permanent structure, no extensions of time will be made for weather after the principal portions of the work are enclosed. County shall determine when the structure is "enclosed" for purposes of this provision.
- (c) Weather days, when granted, will be on the basis of 1.4 calendar days credit for every working day lost, with the credit for each separate extension rounded off to the nearest whole calendar day. A "working day lost" will not include any day during which at least 60% of the normally scheduled workforce is able to work for at least five hours of the day.
- (d) No damages or increase in the Contract Price, for delays arising from weather days shall be granted.

14.3.3. Contractor shall not be entitled to any extension under this Section if the unforeseen circumstances occur beyond the Contract Time.

**14.4. CONDITIONS AFFECTING THE WORK**

14.4.1. Existing Site Conditions: Information regarding the work site represented in the Plans and Special Provisions is believed to be correct, but unless expressly stated in the Contract Documents, County does not warrant either the completeness or accuracy of such information. Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work and the general and local conditions that can affect the work or the cost thereof. Any failure by Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional expense to County.

14.4.2. Site Investigation and Representation: Contractor acknowledges satisfaction as to the nature and location of the work; the general and local conditions, particularly those bearing upon availability of transportation and access to the site; disposal, handling and storage of materials; availability of labor, water, electric power, telephone, and roads; uncertainties of weather or physical conditions at the site; the conditions of the ground; the character of equipment and facilities needed prior to and during the performance of the work; and all matters that can in any way affect the work or the cost thereof under this Contract.

Contractor further acknowledges satisfaction as to character, quality, and quantity of surface and subsurface materials to be encountered from Contractor's inspection of the site and from reviewing any available records of exploratory work furnished by County or included in the Contract Documents. Failure by Contractor to become acquainted with the physical conditions of the site and all the available information will not relieve Contractor from responsibility for properly estimating the difficulty or cost of successfully performing the work.

Contractor warrants that as a result of examination and investigation of all the above-described data, Contractor can perform the work in a good and workmanlike manner and to the satisfaction of County. County assumes no responsibility for any representations made by any of its officers or agents during or prior to the execution of the Contract unless: (1) such representations are expressly stated in the Contract Documents; and (2) the Contract Documents expressly provides that the responsibility therefore is assumed by County.

14.4.3. Information on Site Conditions

- (a) General: Any information obtained by the County regarding site conditions, subsurface information, groundwater elevations, existing construction of site facilities as applicable, and similar data will be available for inspection upon request. Such information is offered as supplementary information only and not part of the Contract Documents. County assumes no responsibility for the completeness or interpretation of such information.

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- (b) Topographic Maps: Topographic maps were used in the Project design. Bidders may inspect such maps upon request to the County, or may obtain copies upon payment of the cost to reproduce the copies.

14.4.4. Subsurface Investigation: When test holes, if any, have been excavated to indicate subsurface materials at particular locations, County assumes no responsibility whatsoever in respect to the sufficiency or accuracy of borings made, or of the log of test borings, or of other investigations, or of the interpretations made thereof, and there is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations are representative of those existing throughout such area, or any part thereof, or that unforeseen developments may not occur. A log of test borings, if any, showing a record of the data obtained on subsurface conditions may be examined upon request. Contractor may make arrangements with County for permission to conduct such additional subsurface investigation as may be necessary to verify existing conditions. Contractor shall examine the site and may make arrangements with County to conduct Contractor's own subsurface investigation.

14.4.5. Changed Conditions: Contractor shall promptly, but in no event more than 7 days after the condition is first observed, notify County in writing of the following site conditions ("Changed Conditions") and shall leave such conditions undisturbed until otherwise directed by County:

- (a) Subsurface or latent physical conditions at the site differing materially from those represented in the Contract Documents;
- (b) Unknown physical conditions at the site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract; and
- (c) Material differing from that represented in the Contract Documents which Contractor believes may be hazardous waste pursuant to Health & Safety Code Section 25117.

Upon written notice of Changed Conditions from Contractor, County shall promptly investigate such conditions. If County finds that such conditions do materially differ and cause an increase or decrease in the cost of or the time for performance of the work, County may, at its discretion: (a) terminate all or part of the Contract in accordance with "Termination for Convenience County" Section of these General Conditions; (b) issue a written change to the Contract in accordance with the "Changes" Section of these General Conditions; or (c) make any other appropriate arrangements to address the Changed Conditions. Any claim by Contractor for adjustment hereunder shall not be allowed unless Contractor has given proper notice.

In the event that a dispute arises between the Parties as to whether the conditions constitute Changed Conditions or affect the price or time for performance of any part of the work: (i) Contractor shall submit a written notice of potential claim to County; (ii) Contractor shall then proceed with all work to be performed under the Contract; and (iii) Contractor shall not be excused from any scheduled completion date provided for by the Contract. Contractor shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between the Parties.

#### **14.5. PROSECUTION OF CHANGED WORK**

Contractor shall promptly proceed with the work described in a Change Order. Nothing provided in this "CHANGES" Section shall excuse the Contractor from proceeding with the prosecution of the work as changed.

#### **14.6. DIRECTOR'S AUTHORITY**

The Director is authorized by County's Board of Supervisors to order changes or additions in the work where the cost of such change does not exceed the limits specified in Public Contract Code Section 20142. Only the Board of Supervisors may approve changes greater than those limits.



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**14.7. MINOR CHANGES IN THE WORK**

County shall have authority to order minor changes in the work not involving an adjustment in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order and shall be binding on Contractor. Contractor shall carry out such written orders promptly.

**15. TERMINATION**

**15.1. TERMINATION FOR CONVENIENCE OF COUNTY**

Notwithstanding any other provision of the Contract, County may at any time and without cause terminate the Contract, in whole or in part, upon not less than 30 days written notice to the Contractor. Such termination shall be affected by delivery of a Notice of Termination to Contractor specifying the effective date of the termination, whether the Contract shall be terminated in whole or in part, and, if applicable, the portion of work to be terminated. Contractor shall immediately stop work in accordance with the Notice of Termination and comply with any other direction as may be specified in the Notice of Termination or as provided subsequently by County. County shall pay Contractor for the work completed and accepted by County prior to the effective date of the termination, and such payment shall be Contractor's sole remedy. Under no circumstances will Contractor be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination in whole or in part under this provision. Contractor shall insert in all subcontracts that the Subcontractors shall stop work on the date of and, if applicable, the portion of work to be terminated in a Notice of Termination and shall require Subcontractors to insert the same condition in any lower tier subcontracts.

**15.2. TERMINATION FOR CAUSE**

15.2.1. If Contractor fails to carry out the requirements of the Contract, including but not limited to by: failing to commence the work within the time specified; failing to prosecute the work with such diligence as will ensure its completion within the Contract Time; failing to complete the work within the Contract Time; failing to execute the work in the manner specified in the Contract Documents; persistently, willfully, or knowingly failing to comply with applicable laws and regulations; becoming insolvent; assigning or subcontracting any part of the work without County's consent; or if in the opinion of the Board of Supervisors Contractor is not complying in good faith with the Contract; then County may, by written notice to Contractor, terminate for cause Contractor's right to proceed with the work or such part of the work as to which there has been delay, breach, or other default.

15.2.2. Upon receipt of written notice from County of a termination for cause, Contractor shall cease operations as directed by County in the notice and take all actions necessary, or as County directs, for the protection and preservation of the work.

15.2.3. After issuing a notice of termination for cause, County may take over the work and prosecute the same to completion by whatever means County deems reasonable, by contract or otherwise, and may take possession of and utilize in completing the work such materials, equipment, supplies, Contract Documents, and other information in whatever form as may be on the site for the work and necessary therefor.

15.2.4. If County terminates for cause Contractor's right to proceed with the work or Contractor otherwise fails to prosecute the work to completion, then the resulting damage will include but not be limited to Liquidated Damages for such reasonable period of time as may be required for completion of the work together with any costs incurred by County to complete the work in excess of the unpaid Contract Price. Contractor shall not be entitled to receive any further payment under the Contract until the work is complete. If County's cost of completing the work, Liquidated Damages, and other damages exceed the unpaid balance of the Contract Price, then Contractor and Contractor's sureties shall pay the difference to County within thirty days of County's demand therefor.

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15.2.5. Whether or not County issues a written notice of termination for cause, Contractor and Contractor's sureties shall be liable for any damage to County resulting from Contractor refusal or failure to complete the work within the specified time or from Contractor's other breach or default with respect to the performance of the work.

15.2.6. Contractor's right to proceed shall not be terminated for cause nor will Contractor be charged with resulting damage if the delay in the completion of the work arises from causes beyond the control and without the fault or negligence of Contractor, including but not limited to those circumstances described in the "Weather Days and Force Majeure" Section of the General Conditions of County, or acts of another contractor in the performance of a contract with County.

15.2.7. The rights and remedies of County provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

## **16. DISPUTES AND CLAIMS**

### **16.1. DISPUTES AND CLAIMS**

16.1.1. Continuing Performance during Dispute Resolution: In the event of a claim or dispute between Contractor and County as to performance of the work, a demand for an extension of time, the interpretation of the Contract Documents, or payment or nonpayment for work performed, Contractor and County shall attempt to resolve the claim or dispute. Pending resolution of the claim or dispute, Contractor shall continue the work diligently to completion as directed by County. If the claim or dispute is not resolved, Contractor agrees that it will neither rescind this Contract nor stop the progress of the work.

16.1.2. Claims for \$375,000 or Less: In the event of a claim of \$375,000 or less, the Parties shall resolve the claim pursuant to Public Contract Code Sections 20104 et seq., summarized herein. A claim is defined as Contractor's demand for: (i) a time extension; (ii) payment of money or damages arising from work done by, or on behalf of, Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or (iii) an amount the payment of which is disputed by County.

- (a) Pursuant to Public Contract Code Section 20104.2, all claims must be in writing, must be accompanied by documents necessary to substantiate the claims, and must be filed on or before the date of final payment. The County's time to respond in writing and/or request additional documentation shall be as set forth in Public Contract Code Section 20104.2.
- (b) If Contractor disputes County's written response or County fails to respond, Contractor may demand an informal conference. If the claim remains in dispute following the conference, Contractor may file a claim under Government Code Sections 900, et seq. The time limit for filing such claim may be tolled as provided in Public Contract Code Section 20104.2(e).
- (c) The foregoing provisions do not apply to tort claims and do not affect the time periods for filing tort claims.
- (d) In the event a civil action is filed stemming from a claim subject to Public Contract Code Sections 20104 et seq., the Court shall submit the matter to nonbinding mediation unless waived by mutual stipulation. If after mediation the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Code of Civil Procedure Section 1141.11, and the arbitration shall proceed pursuant to the terms set forth in Public Contract Code Section 20104.4(b).
- (e) Attorney's fees arising from a trial de novo shall be awarded as provided by Public Contract Code Section 20104.4(b)(3).

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16.1.3. Claims in Excess of \$375,000: The dispute resolution procedure set forth in Public Contract Code Sections 20104 et seq., shall not apply to resolution of claims in excess of \$375,000, which claims shall be resolved by a court of competent jurisdiction in Orange County, California, after the Project has been completed and not before.

16.1.4. Time for Submitting Claims in Excess of \$375,000 and Waiver of Untimely Claims: Contractor shall submit any claim for additional compensation in excess of \$375,000 to County in writing, with documents necessary to substantiate the claim, stating the alleged facts giving rise to and the alleged basis for the claim, and when the facts giving rise to the claim became known to Contractor. Any such claim that Contractor fails to submit to County within 30 days after Contractor discovers the facts giving rise to the claim shall be deemed waived. In no event shall a claim for additional compensation in excess of \$375,000 be asserted after Contractor submits an application for final payment or after there has been a cessation of the work.

**17. OCCUPANCY****17.1. PARTIAL OCCUPANCY**

17.1.1. County reserves the right to enter and install equipment within each portion of the Project as it is ready to receive same, upon the condition that Contractor shall not be responsible for equipment so placed other than loss or damage caused by the acts or omissions of Contractor or those in Contractor's employ. Such partial occupancy by County shall not constitute acceptance of the Project or of work not completed in accordance with the Contract Documents, nor shall it in any way relieve Contractor from correcting defective workmanship or materials in the area where County has installed equipment.

17.1.2. County reserves the right to take possession of or use all or part of any work prior to completion and final acceptance of all the work. If County exercises this right, Contractor shall be relieved of liability for loss or damage to completed portions of the work other than loss or damage caused by the acts, omissions, or breaches of warranty by Contractor. Such taking of possession by County shall not relieve Contractor from any other provisions of the Contract Documents, shall not constitute a final acceptance of any such work or of work not completed in accordance with the Contract Documents, and shall not relieve Contractor from responsibility for correcting defective workmanship or materials in the area so occupied.

17.1.3. County may at any time during the performance of the work enter the work area for the purpose of performing any necessary work by County labor or other contractors, and for any other purpose in connection with the installation of facilities. In doing so, County shall endeavor not to interfere with Contractor, and Contractor shall not interfere with other work being done by or on behalf of County.

**18. ACCEPTANCE**

Unless otherwise provided in the Contract Documents, County's acceptance of Contractor's work shall be accomplished by County recording a Notice of Completion as promptly as practicable after completion, inspection, and testing of all work required by the Contract Documents. County's acceptance of the work shall be the start date of Contractor's obligations under the "One-year Correction Period" Section of the General Conditions, and of the manufacturers' and installers' warranties required by the Contract Documents. County's acceptance of the work shall not be construed to limit County's rights under the Contract Documents or release Contractor from any responsibility for latent defects, for correcting Defective Work, or for honoring any warranty obligations of the Contract Documents.

**19. MISCELLANEOUS PROVISIONS****19.1. ASSIGNMENT**

Neither the Contract nor any portion thereof may be assigned by Contractor unless approved in writing by County. If Contractor is not a corporation with publicly traded stock, then the transfer of more than 10% of the stock held by shareholders of the corporation or a change in the composition of the board of directors

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of the corporation shall be deemed an assignment for purposes of this clause. Any attempted assignment contrary to the provisions of this Section shall be void.

Notwithstanding the foregoing, claims for monies due or to become due to Contractor from County under the Contract may be assigned with the written consent of the Director to a surety, bank, trust company, or other financial institution and may thereafter be further assigned or reassigned to any such institution. To effect such assignments, Contractor, or Contractor's assignee, shall submit a written request to County enclosing a letter from the proposed assignee indicating that it will accept such assignment.

**19.2. ORAL MODIFICATION**

No oral statement shall in any manner modify the Contract. All changes to the Contract must be in writing.

**19.3. NO WAIVER BY COUNTY**

No failure on the part of County to exercise any right or remedy under the Contract Documents shall operate as a waiver of any other right or remedy that County may have. A waiver by County of any breach or failure to perform under the Contract Documents shall not constitute a waiver of any subsequent breach or failure. The failure of County to enforce a requirement of the Contract Documents in one or more instances shall not preclude County from subsequently enforcing such requirement(s).

**19.4. RECORDS, AUDITS, AND INSPECTION RIGHTS**

Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. Contractor's accounting and control system shall be in accordance with generally accepted accounting practices of the construction industry. Contractor shall preserve all of its books and records relating to this Contract, including but not limited to its job cost records, payables/receivables records, accounting books, bids, cancelled checks, receipts, subcontracts, purchase orders, journals, vouchers, payrolls, correspondence, drawings, daily logs, photographs, and memoranda, for a period of 4 years after final payment. Should Contractor cease to exist as a legal entity, Contractor shall forward its records pertaining to this Contract to the surviving entity in a merger or acquisition, or, in the event of liquidation, to County.

County, the California State Auditor, and their contracted representatives, shall have the right to examine and audit Contractor's accounting procedures and internal controls of Contractor's financial systems and to inspect and copy any books and records relating to this Contract. Such an examination, audit, and/or inspection may be requested at any time during the Project. Contractor shall cooperate fully with County and the California State Auditor in the conduct of such examinations, audits, and inspections, shall grant full access at all reasonable times to its offices, the Project site, and its books and records relating to the Contract, and shall allow County to interview Contractor's employees who might reasonably have information related to Contractor's books and records, provided that County has given Contractor at least one working day's advance notice of County's or the California State Auditor's intent to examine, audit, inspect, and interview employees. All examinations, audits, inspections, and interviews shall be conducted during normal business hours. Contractor shall include in all its subcontracts a provision giving County and the California State Auditor the same rights to examine and audit the Subcontractor's accounting procedures and internal controls of its financial systems, inspect the Subcontractor's books and records relating to the Project, and interview Subcontractor's employees as Contractor has given the County and the California State Auditor in this Section.

**19.5. PUBLIC RECORDS ACT**

Pursuant to the California Public Records Act ("CPRA"), Government Code Sections 6250 et seq., all records provided by Contractor to County are subject to public disclosure upon request except as otherwise provided by law. Prior to their submission to County, Contractor shall identify any records it believes are

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exempt from disclosure, and identify the applicable CPRA exemption. If the disclosure of such records is subsequently requested, County will notify Contractor of such request. Unless Contractor 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. Contractor shall indemnify and defend County in any action to compel disclosure of such records.

**19.6. PATENT INFRINGEMENT**

Contractor shall promptly report to County any notice or claim of patent infringement arising from the performance of the Contract. Contractor shall, upon County's request, furnish to County any and all information in Contractor's possession relevant to such notice or claim. Contractor shall indemnify and defend County from any and all claims or lawsuits on account of any alleged patent infringement arising out of the performance of the Contract, and shall pay any judgment rendered against County, its officers, or its employees resulting from such claim or lawsuit.

**19.7. ASSIGNMENT OF ANTITRUST ACTIONS**

Public Contract Code Section 7103.5 provides: "In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor and/or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties." Contractor acknowledges and agrees to the foregoing provision and shall cause it to be included in full in its Subcontractor agreement(s) to effectuate this assignment and the requirements of Section 7103.5.

**19.8. COUNTY'S PROPERTY ON SITE**

All of County's property removed or displaced pursuant to this Contract shall remain the property of County unless expressly stated otherwise in the Contract Documents, and Contractor shall exercise reasonable care to prevent loss or damage to such property and shall promptly deliver it to the place designated by County. In particular, all excavated clean soil is the property of County and shall remain on site unless otherwise provided in the Contract Documents or otherwise directed by County in writing.

**19.9. WRITTEN NOTICE**

Any notice required under the Contract Documents to be given to County by Contractor shall be in writing and personally delivered to the Project Manager with a copy sent via U.S. mail, addressed as follows:

OC Public Works  
Adam Ramos, Project Manager  
re: IFB-080-2331001-JS  
Crawford Canyon Park and Sidewalk Extension  
600 N. Ross St.  
Santa Ana, California 92701

Notice via electronic mail is insufficient.