



PROJECT MANUAL

REQUEST FOR QUALIFICATIONS AND PROPOSALS OF DESIGN-BUILD ENTITIES

AFRICAN AMERICAN WELLNESS HUB PROJECT

1918 MARTIN LUTHER KING Jr. WAY

OAKLAND, CALIFORNIA 94612

QUALIFICATIONS AND PROPOSALS DEADLINE: July 29, 2025

PROJECT NO. 22016



COUNTY OF ALAMEDA

GENERAL SERVICES AGENCY

1401 LAKESIDE DRIVE, 10TH FLOOR

OAKLAND, CA 94612

DOCUMENT 00 01 09

SUMMARY DESIGN-BUILD ENTITY (“DBE”) RFQ/P CALENDAR

NOTICE – THIS SUMMARY IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT LIST ALL DATES AND/OR TIMES IN THE PROJECT MANUAL DOCUMENTS. The dates and/or times listed may not be relied upon or enforced. This summary does not form a part of the Contract Documents and does not establish deadlines for contractual obligations. All Proposers must refer to the actual Contract Documents, as may be modified by Addenda, prior to Contract award, or as modified upon Contract award or by Modification after award, for all applicable dates, times, and time periods.

Event	Date
RFQ Documents Issued to DBEs	Wednesday, June 11, 2025
Pre-Qualifications and Proposals Meeting (Virtual) @ 9 or 10 AM	Monday, June 23, 2025
Site Visit	Thursday, June 26, 2025
Budget Cost Plan Presentation (Virtual)	Friday, June 27, 2025
Requests for Clarifications Due	Monday, July 7, 2025
Responses to Request for Clarifications	Monday, July 14, 2025
RFQ Submittals Due	Tuesday, July 29, 2025
Interview Notification	Monday, August 18, 2025
Interview Presentations with up to Three (3) Highest Scoring DBEs	Wednesday, August 27, 2025
Issue Notice of Intent to Award	Monday, September 8, 2025
Last Day to Submit Protest	Monday, September 15, 2025
Receive BOS Approval to Award -Estimated	Tuesday, October 14, 2025
Issue Notice of Award	Friday, October 17, 2025
Issue Notice to Proceed (Initial Design & Preconstruction through acceptance of FGMP) - Estimated	Monday, November 17, 2025

END OF DOCUMENT

DOCUMENT 00 01 10

TABLE OF CONTENTS

This Table of Contents describes the Contract Documents provided to Proposers in the form of: Proposing and Contracting Requirements, Divisions 00 and 01, and Exhibits for the Alameda County African American Wellness Hub Project.

PROJECT MANUAL

ADDED/REVISED

DIVISION 00 - PROPOSING AND CONTRACTING REQUIREMENTS

INTRODUCTORY INFORMATION

00 01 01	Project Title Page	June 11, 2025
00 01 09	Summary Design-Build Entity RFQ/P Calendar	June 11, 2025
00 01 10	Table of Contents	June 11, 2025

PROPOSING REQUIREMENTS

00 21 16	RFQ/P Instructions to Proposers	June 11, 2025
00 21 17	Pre-Qualifications and Proposals Meeting Agreement and Waiver of Claims (<i>Not Used</i>)	June 11, 2025
00 22 19	Elation Application PSCBA	June 11, 2025
00 25 17	Access Request Form and Agreement	June 11, 2025
00 31 32	Geotechnical Data and Existing Conditions	June 11, 2025
00 42 53	Proposal Form and Non-Collusion Declaration	June 11, 2025
00 42 53A	Levine Act Disclosure Form	June 11, 2025
00 42 54	Design-Build Entity Qualification Questionnaire	June 11, 2025
00 42 55	Project Management Questionnaire	June 11, 2025
00 43 20	Stipend Agreement	June 11, 2025
00 43 36	Designated Subcontractors List	June 11, 2025
00 45 10	Design-Build Entity Registration and Safety Experience Form	June 11, 2025
00 45 40	Design-Build Entity Certifications	June 11, 2025
00 45 40A	Conflict of Interest Policy	June 11, 2025
00 45 45A ..	Non-Disclosure Agreement (not used)	June 11, 2025

CONTRACT REQUIREMENTS

00 51 00	Notice of Intent to Award	June 11, 2025
00 51 10	Notice of Award	June 11, 2025
00 52 00	Agreement	June 11, 2025
00 54 27	Escrow Bid Documents	June 11, 2025
00 54 28	Escrow Agreement for Security Deposits In Lieu of Retention	June 11, 2025
00 54 36	BIM Performance Requirements	June 11, 2025
00 54 53	Release of Liability/Electronic Data Files	June 11, 2025
00 55 00	Notice to Proceed	June 11, 2025
00 61 13.13	Performance Bond	June 11, 2025
00 61 13.16	Payment Bond	June 11, 2025
00 62 30	Subconsultant/Subcontractor Procurement	June 11, 2025
00 62 40	Small Local Emerging Business (SLEB) Program	June 11, 2025
00 65 19.13	Agreement and Release of Any & All Claims	June 11, 2025
00 65 36	Project Warranty and Correction Guarantee	June 11, 2025

CONDITIONS OF THE CONTRACT

00 72 53	General Conditions	June 11, 2025
00 73 13	Special Conditions	June 11, 2025
00 73 16	Insurance Requirements	June 11, 2025
00 73 49	Project Stabilization/Community Benefits Agreement (PSCBA) ..	June 11, 2025
00 73 50	Apprenticeship Program	June 11, 2025

DIVISION 01 - GENERAL REQUIREMENTS

01 11 10	Summary of Work	June 11, 2025
01 11 14	Summary of Work - Design Services, Preconstruction Activities, and Deliverables.....	June 11, 2025
01 12 16	Work Sequence	June 11, 2025
01 14 00	Work Restrictions	June 11, 2025
01 21 00	Allowances	June 11, 2025
01 25 00	Product Requirements - Request for Substitution Form.....	June 11, 2025
01 26 00	Contract Modification Procedures.....	June 11, 2025
01 29 00	Payment Procedures	June 11, 2025
01 31 00	Project Management and Coordination	June 11, 2025
01 31 19	Project Meetings	June 11, 2025
01 32 16	Schedules and Reports	June 11, 2025
01 32 33	Photographic Documentation	June 11, 2025
01 33 00	Submittal Procedures	June 11, 2025
01 41 00	Regulatory Requirements	June 11, 2025
01 42 00	References and Definitions.....	June 11, 2025
01 45 00	Quality Control and Assurance	June 11, 2025
01 50 00	Temporary Facilities and Controls.....	June 11, 2025
01 52 00	Construction Facilities for Contractor and County Use.....	June 11, 2025
01 55 26	Traffic Control	June 11, 2025
01 60 00	Product Requirements.....	June 11, 2025
01 61 16	Volatile Organic Compound (VOC) Content Restrictions	June 11, 2025
01 71 23	Field Engineering	June 11, 2025
01 73 00	Execution Requirements	June 11, 2025
01 73 29	Cutting and Patching	June 11, 2025
01 73 32	Selective Demolition	June 11, 2025
01 74 19	Construction Waste Management and Disposal	June 11, 2025
01 77 00	Closeout Procedures	June 11, 2025
01 78 23	Operation and Maintenance Data.....	June 11, 2025
01 78 39	Project Record Documents.....	June 11, 2025
01 79 00	Demonstration and Training	June 11, 2025
01 81 13	Sustainable Design Requirements LEED v4 BD+C NC & MR.....	June 11, 2025
01 81 14	Low Carbon Concrete	June 11, 2025
01 81 19	Indoor Air Quality Control.....	June 11, 2025
01 88 19	Asbestos Removal Performance Requirements	June 11, 2025
01 88 19A	Certificate of Asbestos Worker Acknowledgement.....	June 11, 2025
01 88 19B	Certificate of Competent Person Acknowledgement	June 11, 2025
01 88 22	Soils Remediation Performance Requirements	June 11, 2025
01 88 25	Misc. Hazardous Materials Performance Requirements	June 11, 2025
01 91 13	General Commissioning Requirements	June 11, 2025

EXHIBITS TO PROJECT MANUAL: CRITERIA DOCUMENTS

- I. Project Description, Operations and Space Plan Dated May 16, 2025
- II. Behavioral Health Department Briefing & History - Dated March 20, 2025
- III. Budget Cost Plans - Dated May 1, 2025 (20 Pages)
- IV. Assessment Reports
 - A) Facility Conditions Assessment Report – Dated December 6, 2022, (103 Pages)
 - B) Sewer Lateral Report Certificate – Dated August 20, 2019 (1 Page)
- V. Informational Documents
 - A) Title Report – Dated June 15, 2023, (26 Pages)
 - B) Site & Drone Pictures – Dated March 6, 2024 (36 Pictures)
 - C) Boundary Map – Dated December 2017 (1 Page)
- VI. County Standards
 - A) The County of Alameda Supplemental Guideline for Life Cycle Cost Analysis – Dated November 2, 2022 (15 pages)
 - B) The County of Alameda Supplemental Guideline for Control Systems - Dated November 2, 2022 (22 pages)
 - C) The County of Alameda Supplemental Guideline for Control System Naming Convention (16 pages)
 - D) Document 23 09 XX, Graphics Design Convention (18 pages)
 - E) The County of Alameda Supplemental Design Guidelines for Solar Thermal Systems – Dated November 2, 2022 (18 pages)
 - F) The County of Alameda Supplemental Design Guidelines for Interior Lighting – Dated January 31, 2023 (12 pages)
 - G) The County of Alameda Supplemental Design Guideline for Exterior Lighting – Dated January 31, 2023 (8 pages)
- VII. Environmental Documents
 - A) Phase 1 Environmental Site Assessment Report – Dated November 4, 2022 (2933 Pages)
 - B) Phase 2 Environmental Site Assessment Report – Dated August 31, 2023 (74 Pages)

END OF DOCUMENT

REQUEST FOR QUALIFICATIONS AND PROPOSALS

INSTRUCTIONS TO PROPOSERS

[African American Wellness Hub Project No. 22016]

TABLE OF CONTENTS

1.	RECEIPT OF QUALIFICATIONS AND PROPOSALS FROM PROPOSERS.....	1
2.	CONTACT INFORMATION.....	1
3.	DETERMINATION OF BEST VALUE, CONTRACT SUM / INITIAL GMP FOR CONTRACT AWARD, AND INCREMENTAL FINAL GMP.....	2
4.	SCOPE OF WORK AND NEEDS OF THE PROJECT.....	3
5.	NOT USED).....	4
6.	REQUIREMENT FOR PROJECT STABILIZATION/COMMUNITY BENEFIT AGREEMENT.....	4
7.	QUALIFICATIONS AND PROPOSALS AND SUBCONSULTANT/SUBCONTRACTOR PROCUREMENT PLAN.....	4
8.	REQUIRED NON-COLLUSION DECLARATION.....	5
9.	PROPOSER CERTIFICATIONS.....	5
10.	COUNTY SUBCONTRACTOR OUTREACH PROGRAMS.....	5
11.	ELECTRONIC DOCUMENTS.....	5
12.	QUALIFICATIONS AND PROPSALS -RELATED CONFERENCE(S).....	6
13.	OTHER REQUIREMENTS PRIOR TO QUALIFICATIONS AND PROPOSALS SUBMISSION.....	6
14.	EXISTING CONDITIONS AND RELATED DATA.....	6
15.	WAGE RATES.....	6
16.	ADDENDA.....	7
17.	SUBSTITUTION OF EQUAL.....	7
18.	SUBMISSION OF QUALIFICATIONS AND PROPOSALS.....	8
19.	QUALIFICATIONS AND PROPOSALS RECEIPT AND EVALUATION.....	13
20.	REQUEST FOR SUPPLEMENTAL INFORMATION:.....	14
21.	EVALUATION FACTORS.....	16
22.	NOTICE OF INTENT TO AWARD; QUALIFICATIONS AND PROPOSALS PROTEST.....	17
23.	ANNOUNCEMENT OF NOTICE OF AWARD.....	19
24.	POST NOTICE OF AWARD REQUIREMENTS.....	19
25.	PUBLIC RECORDS ACT REQUESTS.....	19

26.	COSTS OF PREPARING QUALIFICATIONS AND PROPOSALS	20
27.	DEFINITIONS.	20

DOCUMENT 00 21 16

REQUEST FOR QUALIFICATIONS AND PROPOSALS

INSTRUCTIONS TO PROPOSERS

The County of Alameda, acting by and through its General Services Agency, as agent, will receive sealed Qualifications and Proposals from Design-Build Entities for: African American Wellness Hub, dated June 11th, 2025 (individually a “Proposer” and collectively “Proposers”), who will be responsible for assembling a Design-Build Team to provide programming, design, preconstruction, and construction services pursuant to a Progressive Design-Build project delivery process for the following public work:

African American Wellness Hub Project No. 22016

1. RECEIPT OF QUALIFICATIONS AND PROPOSALS FROM PROPOSERS.

- 1.1. Sealed Qualifications and proposals must be submitted to the County at the Office of the County, see paragraph 2.1 below, on July 29th, 2025. Qualifications and Proposals are due before **2:00 PM**, as determined by the County’s Project Manager’s date stamp of the Office of the County (“**Qualifications and Proposals Deadline**”). County may reject all Qualifications and Proposals received after the Qualifications and Proposals Deadline and may return such late Qualifications and Proposals to Proposers unopened. Proposers must submit Qualifications and Proposals in accordance with this Document 00 21 16 (Request for Qualifications and Proposals - Instructions to Proposers).

2. CONTACT INFORMATION.

All inquiries and requests for information shall be addressed in writing (e-mail acceptable) to the County’s Strategic Facilities Capital Planning Manager, Tom McKimmy (“Sr. Project Manager”).

- 2.1. Mailing and street address of the Office of the County:
County of Alameda
1401 Lakeside Drive, 10th Floor
General Services Agency
Oakland, CA 94612
- 2.2. County of Alameda General Services Agency, Strategic Facilities Capital Planning Department:
Tom McKimmy 1401 Lakeside Drive, 10th Floor
General Services Agency, Strategic Facilities Capital Planning Manager
Oakland, CA 94612
Email: McKimmy, Tom - TMCKIMMY@acgov.org
- 2.3. County’s “Construction Manager for the Project is”
Vanir Construction Management
1901 Harrison Street, Suite 130
Oakland, CA 94612

3. DETERMINATION OF BEST VALUE, CONTRACT SUM / INITIAL GMP FOR CONTRACT AWARD, AND INCREMENTAL FINAL GMP.

If the Contract is to be awarded, the County will award to the Design-Build Entity whose Qualifications and Proposals are determined by the best score and interview for the Project based on the requirements and evaluation factors established in this Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers) (“RFQ/P”).

- 3.1. An initial Contract Sum value (“Initial GMP”), will be awarded which includes:
 - 3.1.1. The County-Specified Allowances for Direct Construction Cost of Phase II Construction Work, Design Contingency, and Cost Escalation to Midpoint of Construction, in the LUMP SUM AMOUNT of \$16,767,111 as provided in Paragraph 6 of Document 00 42 53 (Proposal Form and Non-Collusion Declaration);
 - 3.1.2. Design-Build Entity’s FIXED PERCENTAGE RATES for Indirect Costs of Construction to be applied to Direct Costs of Construction (which shall be \$16,767,000 for purposes of a calculating the Initial GMP);
 - 3.1.3. The LUMP SUM PRICE provided in Paragraph 6 of Document 00 42 53 (Proposal Form and Non-Collusion Declaration) for Design-Build Entity to obtain the Builder’s Risk Insurance coverage specified in Document 00 73 16 (Insurance Requirements).
 - 3.1.4. Design-Build Entity’s Lump Sum Amount Proposal Price for A/E Design & Engineering Fees through acceptance of Final GMP and for Design-Build Entity/Subcontractor Fees for Preconstruction Services through acceptance of Final GMP; and
 - 3.1.5. Design-Build Entity’s FIXED PERCENTAGE RATES applied to the above Direct Costs and Indirect Costs including the cost of Builder’s risk insurance for Phase II A/E Design & Engineering Fees and Preconstruction Services;
 - 3.1.6. The total of the above amounts shall be guaranteed by Design-Build Entity not to exceed SIXTEEN MILLION SEVEN HUNDRED SIXTY-SEVEN THOUSAND ONE HUNDRED AND ELEVEN DOLLARS (\$16,767,111) subject to adjustment as provided in the Contract Documents (“Initial GMP” or “IGMP”), which IGMP will be superseded by the Final GMP.
- 3.2. The Work will proceed in two (2) main Phases. “Phase I” will include services to develop the design and preconstruction activities sufficient to incrementally establish a Final Guaranteed Maximum Price (“Final GMP” or “FGMP”) as described in Section 1.1 of Document 00 52 00 (Agreement) (“Phase I”). Upon agreement of Final GMP for a Component of the Work, the County, at its sole discretion, will authorize Design-Build Entity in writing to proceed with the remaining design and preconstruction for an agreed fixed percentage rate applied to Direct Costs and Indirect Costs and **including** the cost of Builder’s risk insurance, and with Construction Work and activities sufficient to achieve Final Completion and closeout the Project, consistent with the Final GMP as described in Section 1.2 of Document 00 52 00 (Agreement) (“Phase II”).
- 3.3. The Scope of Work includes distinct Components, each of which is anticipated to be publicly issued for bid (alone or in combination with other Components) by the Design-Build Entity to applicable trade Subcontractors as Bid Packages in accordance with Design-Build Entity’s Final GMP Development Plan, as approved by County. It is anticipated that Phase II Work for the mutually agreed Components of the Work will proceed through bidding and construction concurrently with Phase I Work. The Initial GMP will be superseded by the Final GMP, if approved by the County. The Fixed Percentage Rates for Indirect Costs for “General Conditions Costs, the lump sum amounts for Phase I Design & Preconstruction Services and fixed percentage rates for Phase II Remaining Design, Preconstruction Services & Construction Administration (without duplication of General Conditions Costs) through Closeout will not increase or decrease due to changes in the Direct Costs of the Work occurring during Phase I or Phase II, unless such increases or decreases result from unknown Site conditions inconsistent

with the information included in the Criteria Documents, or significant County-directed changes to the Criteria Documents or to County-approved and permitted Construction Documents. Any changes to the foregoing Fixed Percentage Rates and lump sum amounts will occur only pursuant to Change Orders issued in accordance with the Contract Documents.

- 3.4. For any requests for adjustments to the Initial GMP or the duration of the Work during Phase I, Design-Build Entity must establish the contractual and factual basis for entitlement and the adjustment must be agreed to by the County. Any unused portion of the Initial GMP, upon acceptance of the Final GMP Proposal, shall accrue to the Project Contingency. After the Final GMP is accepted by the County, the County may, consistent with the requirements of Document 01 26 00 (Contract Modification Procedures), modify the Contract with Design-Build Entity accordingly. Any unused portion of the Final GMP shall be considered cost savings, which accrue solely to the County and shall be returned to the County as provided in Section 3.3 below and in Article 8 of the Agreement.
- 3.5. The County reserves the right to deem any Qualifications and Proposals non-responsive if the Qualifications does not meet the requirements set forth in the Contract Documents.
- 3.6. The qualifying Proposer whose Qualifications and Proposals and Fee receives the highest Best Value score determined by the criteria specified in Articles 18 and 21 below, Evaluation Factors, will be recommended to the County Board of Supervisors for award of the Contract as provided in this Document 00 21 16 (Request for Qualifications and Proposals - Instructions to Proposers) for negotiation and award of the Contract as provided in California Public Contract Code ("PCC") § 22185.5.
- 3.7. If the Design-Build Entity's cost for all A/E Design & Engineering Fees, Direct Costs and Indirect Costs for completing all design, preconstruction, and construction activities sufficient to achieve Final Completion and closeout the Project exceed the Final GMP, the costs exceeding the Final GMP shall be the sole responsibility of Design-Build Entity. If the Design-Build Entity's costs for A/E Design & Engineering Fees, Direct Costs and Indirect Costs for these activities are less than the Final GMP, Design-Build Entity shall not be entitled to the difference between the cost and the Final GMP and this difference shall be considered cost savings, which accrue solely to the County and shall be returned to the County.
- 3.8. Pursuant to PCC § 22185.5, if the County and Design-Build Entity do not reach agreement on a Final GMP or the County otherwise elects not to proceed with Design-Build Entity to complete the remaining Work, the County may proceed to negotiate with the second ranked Proposer or solicit Qualifications and Proposals to complete the Project from firms that submitted Qualifications and Proposals in response to the RFQ/P. The County may also, upon written determination that it is in the best interest of the County to do so, formally solicit Qualifications and Proposals from other Design-Build Entities, and a Contract award shall be made on a Best Value basis.
- 3.9. The design professionals responsible for performing design services on behalf of a Design-Build Entity that has been replaced pursuant to Paragraph 3.7 above shall have sole liability for their design errors and omissions, provided the County elects to use their complete and stamped designs with subsequent Design-Build Entities or licensed contractors.

4. SCOPE OF WORK AND NEEDS OF THE PROJECT.

The County is inviting Progressive Design-Build Qualifications and Proposals for the programming, design, demolition, and construction of the Alameda County African American Wellness Hub Project ("Project") located at 1918 Martin Luther King Jr. Way, Oakland, Ca.) . The scope of the Project includes the demolition of the existing building and the construction of a new building, the approximate gross area of 18,000 square feet, divided across multiple floors, including a basement level. The facility will be dedicated to holistic African American culture, wellness, education and community engagement. It will serve as a culturally significant wellness and education hub, incorporating traditional African American design elements,

community-focused programming, and a warm, inviting atmosphere that fosters healing, learning, and social connection. The Design-Build Entity will be responsible for translating the Owner's vision into a functional, aesthetically coherent, and operationally efficient facility that meets all applicable building codes, sustainability standards, and regulatory requirements.

(See the Exhibits to the Project Manual: Criteria Documents, Exhibit I – Project Description)

- 4.1. The Scope of Work as contained within Document 01 11 10 (Summary of Work) and Document 01 11 14 (Summary of work – Design Services) and the Exhibits to the Project Manual is summarized as follows:
- 4.2. Demolition of existing structure and construction of new building. Programming, planning, and design of these key Facility elements.
- 4.4. Design-Build Entity shall provide detailed calculations and design documentation for all key Facility elements prior to construction and submit for review by the applicable Authority Having Jurisdiction (“AHJ”).
- 4.5. Proposers are responsible for facilitating the approval and permitting process by developing design packages for Subcontractor bidding as required to expedite the Project Milestone Schedule as outlined in Document 00 01 09 (Summary DBE RFQ/P Calendar).
- 4.6. Proposers are hereby notified that, notwithstanding any other provision in this Document 00 21 16 (Request for Qualifications and Proposals - Instructions to Proposers), the Scope of Work described in the Criteria Documents and (Document 00 24 16) must be fulfilled.
- 4.7. The County plans to pursue a Class 2 CEQA categorial exemption for replacing or reconstructing a building as identified in Cal. Code Regs. tit. 14, § 15302. Replacement or Reconstruction. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to: Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity. The County will prepare the required CEQA documentation for approval by the Board of Supervisors prior to issuance of the Notice to Proceed for demolition or construction of the building.

5. NOT USED)

6. REQUIREMENT FOR PROJECT STABILIZATION/COMMUNITY BENEFIT AGREEMENT.

On October 6, 2020, the County's Board of Supervisors authorized the County to enter into a Project Stabilization/Community Benefits Agreement ("PSCBA") (also known as a Project Labor Agreement or "PLA") for this Project. PSCBA requirements are described in Document 00 73 49 (PSCBA). Proposers are reminded that § 2500(a)(3) of the California Public Contract Code requires a public entity PLA to include an agreed-upon protocol concerning drug testing for workers employed on the Project. In order to submit a Qualifications and Proposals in accordance with this Document 00 21 16 (Request for Qualifications and Proposals - Instructions to Proposers), Proposers shall (a) submit a signed copy of the PSCBA as part of the Qualifications and Proposals Package required by Articles 18 and 19, Submission of Qualifications and Proposals of this Document 00 21 16 (Request for Qualifications and Proposals - Instructions to Proposers) and (b) certify in Document 00 45 40 (Design-Build Entity Certifications) that they agree to be bound by and comply with the conditions of the PSCBA.

7. QUALIFICATIONS AND PROPOSALS AND SUBCONSULTANT/SUBCONTRACTOR PROCUREMENT PLAN.

- 7.1. Each Proposer's Qualifications and Proposals shall satisfy all requirements of this Document 00 21 16 (Request for Qualifications and Proposals - Instructions to Proposers). Each Proposer's

Qualifications and Proposals shall include, among other things, the information establishing that Proposer meets or exceeds the evaluation factors specified in Article 21 (Evaluation Factors) below.

- 7.2. The Qualifications and Proposals shall be submitted in an Electronic Copy, as defined in Paragraph 11.1 below, on a USB flash drive, consistent with Article 11 (Electronic Documents) below, and be in printed in hard-copy format in a 3-ring notebook(s) with a tab (or electronic bookmark for digital submission) for each of the required submissions and the Proposer evaluation categories.
- 7.3. Each Proposer shall also submit a Subconsultant/Subcontractor Procurement Plan satisfying all requirements of Document 00 62 30 (Subconsultant/Subcontractor Procurement). The required Qualifications and Subconsultant/Subcontractor Procurement Plan must be submitted in sufficient detail to demonstrate a high degree of fidelity to the Scope of Work.

8. REQUIRED NON-COLLUSION DECLARATION.

Each Proposer must submit with its Qualifications and Proposals Document 00 42 53 (Proposal Form and Non-Collusion Declaration). County may reject as non-responsive any Qualifications and Proposals submitted without a Non-Collusion Declaration. No Proposer may make or file or be interested in more than one Qualifications and Proposals for the same supplies, services, or both, provided, however, that a person, firm, or corporation that has submitted a sub-Qualifications and Proposals as a Design-Build Team member to a particular Design-Build Entity is not thereby disqualified from submitting a sub-Qualifications and Proposals to other Design-Build Entities provided such individual has no ownership interest in any Design-Build Entity, which lists the individual in its Qualifications and Proposals.

9. PROPOSER CERTIFICATIONS.

Each Proposer must submit Document 00 45 40 (Design-Build Entity Certifications) with its Qualifications and Proposals. County will reject as non-responsive any Qualifications and Proposals submitted without Design-Build Entity Certifications.

10. COUNTY SUBCONTRACTOR OUTREACH PROGRAMS.

The County's Small Local Emerging Business ("SLEB") Program and Elation Systems Contract Compliance Application and Project Stabilization Community Benefits Agreement (Documents 00 22 19 and 00 62 40) shall apply to this Project. Subconsultant and Subcontractor outreach requirements are included in Document 00 22 19 (Elation Application and Project Stabilization Community Benefits Agreement ("PSCBA")) and must be submitted by each Proposer in accordance with the requirements of Documents 00 22 19 (Elation Application and PSCBA), 00 62 30 (Subconsultant/Subcontractor Procurement), and 00 62 40 (SLEB Program). To be considered for a Contract award, Design-Build Entity must meet a minimum SLEB requirement of twenty percent (20%) of the amount listed as total design services. Design-Build Entity must submit as part of its Qualifications and Proposals written documentation evidencing a firm contractual commitment to meet this minimum SLEB participation requirement. Participation for Subconsultants must be described in the Design-Build Entity's Subconsultant/Subcontractor Procurement Plan pursuant to Document 00 62 30.

- 10.1. The County may implement a "Contractor Assistance Program" that would apply to this Project. The program would seek to increase the ability of small professional service firms and contractors to participate in this and other projects by providing them with, among other things, assistance in obtaining any required bonds. Design-Build Entity will be afforded the opportunity to participate in any such program for the benefit of its Subconsultants and Subcontractors.

11. ELECTRONIC DOCUMENTS.

- 11.1. In addition to hardcopy paper documents, County may, in its sole discretion, and solely as a

convenience to Proposers, elect to provide various documents and/or other information through USB flash drive, through a link to a website that houses the documents, or through other electronic forms (collectively, "Electronic Copy(ies)"). In all cases, the hardcopy paper document shall be referred to, and shall control, in the event of any inconsistency between a hardcopy paper document and an Electronic Copy, except for design documents. Use of design documents received as electronic data files shall be governed as stated in Document 00 54 53 (Release of Liability/Electronic Data Files).

- 11.2. Proposers must check all electronic media for computer viruses before loading any files therefrom. Proposers are fully responsible for intercepting and disabling viruses, if any, that may be inadvertently transmitted with an Electronic Copy. Also, files distributed electronically are subject to data erosion, erasure, and/or alteration, and computer systems and software become obsolete in time (together, "Data Erosion"). By taking any step to open or otherwise use any electronic file, each Proposer acknowledges these risks and releases and holds harmless County, and its officers, employees, consultants, representatives, and agents from and against all claims of any type or nature arising from or relating to any virus inadvertently transmitted or any Data Erosion. In addition, the composition of electronic files and the adjuncts to them were created for the use and convenience of the County and may not be compatible with other users. As a result, Proposers acknowledge that Electronic Copies may not match printed hardcopies, and that it is the responsibility of the Proposers to ensure printed hardcopy documents match the Electronic Copies.

12. QUALIFICATIONS AND PROPSALS -RELATED CONFERENCE(S).

- 12.1. Pre-Qualifications Meeting (Virtual). The County will conduct a virtual Pre-Qualifications Meeting on June 23th, 2025 @ 10 :00 AM , which each Proposer may attend. In coordination with the County, Proposer may schedule Site visits for existing condition assessments. Proposers and additional members of a Proposer's Design-Build Team may attend as the Proposer elects. The proposed time and location listed above are subject to change, meeting details will be provided in the County Website. In response to questions arising at the Pre-Qualifications Conference, the County will post any Addenda, if applicable, on the County's website.

- 12.1.1. Site Access. Proposers may request access to the Site. Before a Proposer is allowed to access the Site, it must meet all requirements, including but not limited to insurance and indemnity as set forth in Document 00 25 17 (Access Request Form and Agreement).

13. OTHER REQUIREMENTS PRIOR TO QUALIFICATIONS AND PROPOSALS SUBMISSION.

Submission of a Qualifications and Proposals signifies the Proposer's careful examination of the Contract Documents and complete understanding of the nature, extent, and location of the Work to be performed. Proposers must complete the tasks listed in Article 9, "Design-Build Entity's Representations and Warranties," of Document 00 52 00 (Agreement) as a condition precedent to submitting a Qualifications and Proposals, and submission of a Qualifications and Proposals shall constitute the Proposer's express representation to County that Proposer has fully completed these tasks.

14. EXISTING CONDITIONS AND RELATED DATA.

Proposers shall examine all available existing conditions information, including the Exhibits to the Project Manual.. Document 00 31 32 (Geotechnical Data and Existing Conditions) applies to all existing drawings, geotechnical reports, and hazardous material surveys supplied by County, as well as any other information supplied regarding existing conditions above ground or below grade.

15. WAGE RATES.

This Project is a public work as defined in Labor Code § 1720. Proposers are required to comply with all applicable prevailing wage requirements and regulations. Copies of the current General Prevailing Wage Determinations of per diem wages for each craft, classification, or type of worker needed to design and construct the Project, as determined by Director of the State of California Department of Industrial Relations, can be found on the DIR website: <https://www.dir.ca.gov/oprl/dprevwagedetermination.htm> and are incorporated by reference and deemed included in the submitted Qualifications and Proposals Packages. Upon request, County will make available copies to any interested Proposer.

16. ADDENDA.

Proposers must direct all requests for clarification about the meaning or intent of any documents related to this Document 00 21 16 (Request for Qualifications and Proposals - Instructions to Proposers) to the County's Project contact identified in Paragraph 2.2 above, in writing. The County will issue by formal written Addenda any interpretations or clarifications it considers necessary in response to such question(s). The County will issue Addenda to all qualified and accepted Proposers. The County will not respond to questions received after July 7, 2025. Only questions answered by formal written Addenda shall be binding on the County; oral responses or any other interpretation or clarification will be without legal effect.

- 16.1. At the County's discretion, it may also issue Addenda to modify any documents related to this Document 00 21 16 (Request for Qualifications and Proposals - Instructions to Proposers).
- 16.2. The Proposer shall acknowledge its receipt of any Addenda in Document 00 42 53 (Proposal Form). Proposers may obtain a complete list of Addenda from the County's Project contact identified in Paragraph 2.2 above.

17. SUBSTITUTION OF EQUAL.

Qualifications and Proposals shall be based on materials, products, systems, and equipment Specified in the Contract Documents. Listed materials, products, systems, and equipment are provided as examples of required quality levels. Proposers are encouraged to seek alternative manufacturers for equipment which provide equal or better quality, competitive pricing, or other benefits to the Project.

- 17.1. Request For Substitution of Equal. The County is not responsible or liable in any way for the Proposer's damages or claims related, in any way, to that Proposer basing its Qualifications and Proposals on any Request For Substitution that the County has not approved by Addendum. Proposer will be held responsible for: (a) all costs and claims arising from any cost or schedule impact resulting from the County's approval of a Request For Substitution; and (b) all costs and claims arising from any cost or schedule impact resulting from any Request For Substitution not approved by the County. Proposers who submit Requests For Substitutions prior to the award of the Contract must do so in writing and in accordance with Public Contract Code § 3400. All such requests must comply with the following:
 - 17.1.1. Proposers may submit a Request For Substitution no later than fourteen (14) Days before the Qualifications and Proposals Deadline. The County reserves the right not to act upon a Request For Substitution until after the Qualifications and Proposals Deadline. Any Request For Substitution shall contain sufficient information, as set forth in Document 01 60 00 (Product Requirements), to allow the County to assess the acceptability of the materials, products, systems, and equipment. Insufficient information is grounds for rejection of any Request For Substitution. In addition to the other Request For Substitution information, Proposer shall specify any impacts to green building performance that may result in the reduction of points awarded to the Project under the most current LEED rating system.
 - 17.1.2. The Addenda issued by County pursuant to above may list any Requests For Substitution that may be approved prior to the Qualifications and Proposals Deadline.
 - 17.1.3. Except as provided for in Document 00 72 53 (General Conditions) and Document 01 60 00 (Product Requirements), Proposers may submit a Request For Substitution after the

issuance of Document 00 51 10 (Notice of Award) only at the sole discretion of the County.

17.1.4. Items that May Not Be Substituted. In accordance with Public Contract Code § 3400, the County has found that certain items may not be substituted because they are either necessary to the Project and only available from one source or are required in order to match other products in use on a particular public improvement either completed or in the course of completion. Accordingly, the County will not permit Requests For Substitution for the following items designated as sole-source equipment, materials, or products.

1) N/A

18. SUBMISSION OF QUALIFICATIONS AND PROPOSALS.

Each Proposer shall submit its Qualifications and Proposals in one or more sealed envelopes, boxes, or other containers (referred to herein as a “**Qualifications and Proposals Package**”) containing the items listed in this Document 00 21 16 (Request for Qualifications and Proposals - Instructions to Proposers) and note that the cost evaluation document submissions must be enclosed in a separate sealed envelope within the Qualifications and Proposals Package as detailed below in this Article 18. Qualifications and Proposals Packages shall be hand delivered to County’s Sr. Planning Manager at the Office of the County of Alameda, identified in Paragraph 2.2 above of this RFQ/P. Each Qualifications and Proposals Package will be time and date stamped by County’s Sr. Project Manager upon receipt. All Qualifications and Proposals Packages shall be marked as follows:

QUALIFICATIONS AND PROPOSALS FOR COUNTY OF ALAMEDA
African American Wellness Hub Project No. 22016
Package ___ of ___

One (1) hardcopy of Proposer’s Qualifications and Proposals Package and one (1) Electronic Copy of the same (on a USB Flash Drive or website link as indicated in Articles 7 and 11 above) shall be submitted to the County as outlined in this section. Proposer’s Qualifications and Proposals Package shall be organized as outlined in this Document 00 21 16 (Request for Qualifications and Proposals - Instructions to Proposers). Proposer’s Qualifications and Proposals Package must contain at a minimum the following, fully completed:

- Executive Summary:** A letter summarizing each element of the Qualifications and Proposals, and items which the Proposer believes will make Proposer’s Qualifications and Proposals superior to the Qualifications and Proposals of other anticipated Proposers.
- Acceptable/Unacceptable Factors for Skilled Labor Force Availability and Safety Record:** Proposer shall submit Document 00 45 40 (Design-Build Entity Certifications) for evaluation of Proposer’s Skilled Labor Availability and an Acceptable Safety Record Report in accordance with Article 21, Evaluation Factors, below. Proposer shall also submit a completed Contractor Agreement to be Bound form, exhibit B to Document 00 73 49 (Project Stabilization Community Benefits Agreement) (“PSCBA”).
- Design-Build Entity Qualification Questionnaire:** It is mandatory that all Design-Build Entities complete the Qualification Questionnaire (Document 00 42 54), provide ALL materials requested therein, and be “qualified” by the County. No Proposal will be accepted from a Design-Build Entity that has failed to comply with the requirements of the Qualification Questionnaire.

Qualification Questionnaires that fail to clearly present ALL of the requested information, present false or misleading information, or are not submitted in the format requested may be considered non-responsive and rejected on that basis.

The County’s qualification determinations will be based on objective evaluation criteria. Neither

the fact of qualification, nor any qualification rating, will preclude the County from additional post-Proposal consideration and determination of whether a Proposer has demonstrated the requisite trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform the proposed Work.

Each Design-Build Entity must identify and provide information for certain Design-Build Team members. The Design-Build Team members listed below, must individually complete the appropriate, scored-question portions of the Qualification Questionnaire and obtain a passing score for the Design-Build Entity as a whole to be qualified. The Design-Build Team members that must be listed for evaluation of qualifications are:

- | | |
|---|--|
| <ul style="list-style-type: none"> • General Contractor (GC) Subcontractors • Mechanical Subcontractor • Electrical Subcontractor • Plumbing Subcontractor | <ul style="list-style-type: none"> • Architect (A/E) Subconsultants • Civil Engineer • Mechanical Engineer • Electrical Engineer • Plumbing Engineer |
|---|--|

The following entities are currently retained by the County or the County’s consultants to assist in the development of criteria and other related documents and precluded from being part of any Design -Build Entity Team:

Entity	Services
<ul style="list-style-type: none"> • Marcene Taylor Inc. • Meg Bower • Ratcliff Architect 	<ul style="list-style-type: none"> • Cost Estimating • Programming • Criteria Review

EXPLANATION OF SCORING FRAMEWORK FOR DOCUMENT 00 42 54 (Qualifications Questionnaire).

There is a maximum possible score of 100 for scored Design-Build Team member questions. A minimum qualifying score of 70 must be attained, or the Design-Build Entity will not be rated as qualified, which will disqualify the Design-Build Entity. Scoring of the Qualification Questionnaire will be prorated to a maximum of 100 points as established for this evaluation category in Article 21 below. For example, if Design-Build Entity Team “A” scores 94 points out of a total possible 100 points, Team A would receive 47 out of 50 prorated points (94/100 = 94%, 94% x 50 = 47 Points out of a total possible 50 Points). Proposer shall provide the County with its Proposal Form submitted in a separate sealed envelope in accordance with Document 00 42 53 (Proposal Form and Non-Collusion Declaration).

The qualification determination for a Design-Build Entity will result from consideration of the scores attained in all parts of the Qualification Questionnaire, which include:

PART I: INFORMATION ABOUT THE DESIGN-BUILD ENTITY AND EACH OF ITS MEMBERS.

Part I applies to the Design-Build Entity as a whole and to each of its Design-Build Team members and is for identification purposes only. There is no scoring value to this part.

Subpart I.A is the only public record portion of the Project Qualification Questionnaire.

PART II: ESSENTIAL REQUIREMENTS FOR THE DESIGN-BUILD ENTITY AS A WHOLE.

Part II applies to the Design-Build Entity as a whole and consists of a series of pass/fail qualification questions. All questions must be answered correctly, or the Design-Build Entity may be disqualified with no consideration given to the remainder of the Questionnaire.

PART III: SCORED QUESTIONS FOR INDIVIDUAL MEMBERS OF THE DESIGN-BUILD TEAM.

Subpart III.A: Scored Questions for the General Contractor

Subpart III.A applies to the General Contractor. It consists of a series of questions that must be answered, each of which has an established numerical score for potential answers (as shown in the sample Scoring Worksheet provided herein). The total score attained establishes the rating for the Design-Build Entity's General Contractor (which may be the Design-Build Entity itself).

There is a maximum possible score of **30** for scored General Contractor questions. A minimum qualifying score of **21** must be attained, or the General Contractor will not be rated as qualified, which will disqualify the Design-Build Entity. A score at or above the minimum will be combined with the scores of other parts of the Qualification Questionnaire to determine the total score for the Design-Build Entity.

Subpart III.B: Scored Questions for the Architect

Subpart III.B applies to the Architect. It consists of a series of questions that must be answered, each of which has an established numerical score for potential answers (as shown in the sample Scoring Worksheet provided herein). The total score attained establishes the rating for the Design-Build Entity's Architect.

There is a maximum possible score of **30** for scored Architect questions. A minimum qualifying score of **21** must be attained, or the Architect will not be rated as qualified, which will disqualify the Design-Build Entity. A score at or above the minimum will be combined with the scores of other parts of the Qualification Questionnaire to determine the Total Score for the Design-Build Entity.

Subpart III.C: Scored Questions for the Subconsultants

Subpart III.C applies to each required Design-Build Team Subconsultant. It consists of a series of questions that must be answered for each Design-Build Team member Subconsultant, each of which has an established numerical score for potential answers (as shown in the sample Scoring Worksheet provided herein). The total score attained establishes the rating for each required Design-Build Team member Subconsultant.

There is a maximum possible score of **20** for each Subconsultant scored questions. A minimum qualifying score of **14** must be attained, or the Subconsultant will not be rated as qualified, which will not disqualify the Design-Build Entity, but will require the Design-Build Entity to make a qualifying Design-Build Team member Subconsultant substitution. A score at or above the minimum will be combined with the scores of other parts of the Qualification Questionnaire to determine the total score for the Design-Build Entity.

Subpart III.D: Scored Questions for the Subcontractors

Subpart III.D applies to each required Design-Build Team Subcontractor. It consists of a series of questions that must be answered for each Subcontractor, each of which has an established numerical score for potential answers (as shown in the sample Scoring Worksheet provided herein). The total score attained establishes the rating for each required Design-Build Team member Subcontractor.

There is a maximum possible score of **20** for each Subcontractor scored questions. A minimum qualifying score of **14** must be attained, or the Subcontractor will not be rated as qualified, which will not disqualify the Design-Build Entity, but will require the Design-Build Entity to make a qualifying Design-Build Team member Subcontractor substitution. A score at or above the minimum will be combined with the scores of other parts of the Qualification Questionnaire to determine the total score for the Design-Build Entity.

PART IV: CONSTRUCTION EXPERIENCE.

To help the County assess to what extent the Design-Build Entity and its Design-Build Team members have completed, or have demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity to the Project, Part IV requires the Design-Build Entity to submit information on recently completed comparable projects designed and constructed by the Design-Build Entity, its General Contractor, and its Architect.

This part includes pass/fail criteria, plus comparable project information for the projects submitted to be scored. Failure to score the minimum specified points will disqualify the Design-Build Entity.

In addition, the County will select four (4) projects, two projects (2) performed by Design-Build Entity's General Contractor and two (2) projects performed by Design-Build architect, from the total list of reference projects submitted by each such Design-Build Team member and include the interviews of owner representatives using the scored Reference Interview Questions provided herein.

Each Reference Interview Question has a possible value ranging from 1 to 10. The aggregate score for all reference interview questions must be equal to or greater than 35 points of the possible 100 points. A combined minimum score of 70 points must be attained or the Design-Build Entity will not be rated as qualified, which will disqualify the Design-Build Entity. A score at or above the minimum will be combined with the scores of other parts of the Qualification Questionnaire to determine the total score for the Design-Build Entity.

Each reference project listed must have a reference form submitted by the RFQ/P deadline specified in this document. The reference form can be found on the qualifications questionnaire.

Reference Interview Questions Design-Build General Contractor:

Reference Interview Questions Design-Build Architect

It is the sole responsibility of the Design-Build entity to ensure that these reference forms are received by the submission deadline. Failure to timely submit the form, or submitting a form with incomplete or outdated information, will result in the projects not being included for scoring. The names, Project address, email, and telephone numbers of references must be current and verifiable. The County reserves the right to: (1) contact any and all names listed by the submitting entity in connection with any of the projects disclosed in the

Qualification Questionnaire; (2) contact any other individuals or organizations that the County determines may have relevant information about the entity's qualifications or the accuracy of any information provided on the Qualification Questionnaire; or (3) visit any of the projects disclosed in the Qualification Questionnaire.

Each Reference Interview Question has a possible value ranging from 1 to 10. The aggregate score for all reference interview questions must be equal to or greater than 35 points of the possible 100 points. A combined minimum score of 70 points must be attained or the Design-Build Entity will not be rated as qualified, which will disqualify the Design-Build Entity. A score at or above the minimum will be combined with the scores of other parts of the Qualification Questionnaire to determine the total score for the Design-Build Entity.

- Project Management, Design & Construction Expertise Questionnaire:** It is mandatory that all Design-Build Entities provide a response to all questions contained within the Program Management, Design & Construction Expertise Questionnaire (Document 00 42 55). No Proposal will be accepted from a Design-Build Entity that has failed to comply with the requirements of the Program Management, Design & Construction Expertise Questionnaire. Proposal responses that fail to clearly present ALL of the requested information, present false or misleading information, or are not submitted in the format where the answers to each question are individually discernable may be considered non-responsive and rejected on that basis.

:

- Cost Evaluation:**

- Proposal Form (Document 00 42 53)

- 1) "Fixed Percentages Rates for Indirect Costs" to compensate Design-Build Entity for "Indirect Costs" for "General Conditions Costs," "Construction Overhead and Profit," "Payment and Performance Bond Premiums," and "Insurance Policy Premiums" for all insurance in Document 00 73 16 (Insurance Requirements) EXCLUDING the Builder's Risk "All-Risk" Insurance Premium Specified in Paragraph 7 of Document 00 73 16 (Insurance Requirements) and excluding the amount set forth above as those terms are defined in Document 01 42 00 (References and Definitions) for markups on Design-Build Entity's Direct Costs of Construction Work.
- 2) Design-Build Entity's price to obtain Builder's Risk "All Risk" insurance to indemnify the County for all damage to the Work for the risks Specified in Paragraph 7 of Document 00 73 16 (Insurance Requirements), which evidence of satisfactory Builder's Risk insurance coverage shall be provided to the County prior to execution of the Contract and within the time specified in Document 00 21 16 (Request for Qualifications - Instructions to Proposers).
- 3) Design & Preconstruction Services Lump Sum Amounts for: (a) A/E Design & Engineering fees through County's acceptance of the Final GMP Proposal; and (b) Design-Build Entity/Subcontractor fees for preconstruction services through County's acceptance of the Final GMP Proposal.
- 4) "Fixed Percentage Rates for Phase II Remaining Design, Preconstruction Services & Construction Administration through Closeout" for: (a) A/E Design & Engineering Fees – Acceptance of Final GMP through Construction Administration and Closeout; and (b) Design-Build Entity/Subcontractor Preconstruction Fees – Acceptance of Final GMP

through Construction Administration and Closeout.

Proposer shall provide the County with its Proposal Form submitted in a separate sealed envelope in accordance with Document 00 42 53 (Proposal Form and Non-Collusion Declaration).

- Letter of Exceptions to Contract Documents:** Provide a letter containing a complete statement of all exceptions, if any, to the Contract Documents. The County, in its sole discretion, will determine whether or not any such exceptions substantially alter the County's Contract Documents. Should the County determine that any such exceptions substantially alter the County's Contract Documents, the exceptions will be factored into the Cost Qualifications and Proposal scoring as indicated in Paragraph 21.3 below.

Proposer shall provide its Letter of Exceptions to Contract Documents, if any, in its own section of the Proposer's Proposal Package.

CHECKLIST QUALIFICATIONS AND PROPOSALS PACKAGE DOCUMENTS TO BE SUBMITTED.

- Executive Summary
- Document 00 42 54 (Design-Build Entity Qualification Questionnaire)
- Project Management Design & Construction Expertise Submission
- Document 00 42 53 (Proposal Form and Non-Collusion Declaration) (in a separate sealed envelope)
- Document 00 42 53A (Levine Act Statement – Party Disclosure Form)
- Document 00 42 55 (Project Management Questionnaire)
- Document 00 45 10 (Design-Build Entity Registration and Safety Experience Form)
- Document 00 45 40 (Design-Build-Entity Certifications)
 - Proposer's Registered Apprentice Program Agreement
 - Proposer's Objections or Protests (as necessary)
- Document 00 73 49 (PSCBA Agreement) Executed Exhibit B Agreement to be Bound to "Project Stabilization Community Benefits Agreement for the County of Alameda."

19. QUALIFICATIONS AND PROPOSALS RECEIPT AND EVALUATION.

- 19.1. County shall date and time stamp all Qualifications and Proposals on receipt. County will not open Qualifications and Proposals Packages publicly and will keep Qualifications and Proposals Packages confidential prior to making a recommendation for award of the Contract to the County Board of Supervisors. Qualifications and Proposals Packages may become public later as described below.
- 19.2. Upon receipt of the Proposer's Qualifications and Proposals, the County's Program Manager and Construction Manager will review the Qualifications and Proposals to confirm any assumptions that vary from the Project Manual or Criteria Documents provided by County. This review ensures that the Qualifications and Proposals aligns with the Project's expectations. County may consider Qualifications and Proposals non-responsive if they do not meet the minimum requirements outlined in Document 00 21 16 (Request for Qualifications and Proposals

- Instructions to Proposers).

- 19.3. The County will keep all information regarding the Qualifications and Proposals confidential until completion of the County's evaluation of all Qualifications and Proposals and recommendation to award is presented to the Board of Supervisors.
- 19.4. The County will invite each Proposer who submits a responsive Qualifications and Proposals to present its Qualifications and Proposals in technical oral presentations providing the details of its Qualifications and Proposals to the County's Qualifications and Proposals review team on each evaluation factor category listed in Article 21 (Evaluation Factors) below and other differentiating factors deemed significant by the Proposer.
 - 19.4.1. Presentations will be held approximately ten (10) days following the submittal of Qualifications and Proposals.
- 19.5. Upon completion of the technical presentations, the County will complete the technical review of the Qualifications and Proposals.

20. REQUEST FOR SUPPLEMENTAL INFORMATION:

If the County determines that any of the Qualifications and Proposals Packages require further detail or lack sufficient alignment with the County's expectations for the Project, the County may issue a Request for Supplemental information ("RSI") to any such Proposer, which will include a date by which the Proposer's RSI responses are due before technical presentations are scheduled. Each such Proposer shall submit its response to the County's RSI by the deadline specified therein and shall outline any/all changes made to its original Qualifications Package.

- 20.1. Each such Proposer shall submit its response to the County's RSI by the deadline specified therein and shall outline any/all changes made to its original Qualifications and Proposals Package.
- 20.2. During the County's technical review period, Proposers must respond in a timely manner to all questions from the County regarding its Qualifications and Proposals.
- 20.3. Proposers will be invited to a presentation, following the completion of the County's technical review, to present its Qualifications and Proposals to the County in an interview, see Article 21 (Evaluation Factors) below.
- 20.4. **Best and Final Offers.** County reserves the right to conduct discussions with all Proposers determined to be reasonably susceptible of being recommended for negotiation and Contract award. Discussion shall be for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of Proposals and such revisions may be permitted after submissions and before recommendation for negotiation and Contract award for obtaining best and final offers. In conducting discussions, there shall be no disclosure of identity of competing Proposers or of any information derived from Proposals submitted by competing offerors.
- 20.5. County may reject any Qualifications and Proposals and may waive, to the fullest extent permitted by law, any informalities or minor irregularities therein not involving price, time, or changes in the Work. County also reserves the right, in its discretion, to reject all Qualifications and Proposals and issue a subsequent Request for Qualifications and Qualifications and Proposals of Design-Build Entities for the Project. Additionally, County reserves the right to: (i) reject any nonconforming, non-responsive, or conditional Qualifications and Proposals; (ii) reject any Qualifications and Proposals that includes nominal/low prices for some Work items and enhanced prices for other Work items; and (iii) reject the Qualifications and Proposals of any Proposer if County believes for any reason that it would not be in the best interest of the Project to make an award to that Proposer. By submitting a response to this RFQ/P, each Proposer expressly agrees to and accepts the following conditions:

- 20.5.1. Any and all parts of this RFQ/P, and the submitted Qualifications and Proposals Package will become part of the Contract between the selected Design-Build Entity and the County.
- 20.5.2. All information submitted shall be considered firm and binding.
- 20.5.3. The County reserves the right to solely judge Design-Build Entity's representations, either written or oral, and to solely determine whether Design-Build Entity is qualified to perform the Work pursuant to the evaluation criteria set forth herein. Design-Build Entity, by submitting a Qualifications and Proposals, expressly acknowledges and agrees that the judgment of the County as to whether or not Design-Build Entity is qualified to perform the Project. The County may seek the assistance of outside technical experts to evaluate Design-Build Entity's qualifications.
- 20.5.4. The County reserves the right to reject all Qualifications and Proposals, issue subsequent requests for Qualifications and Proposals, remedy technical errors in the request for Qualifications and Proposals process, waive any irregularity in any of the responses, determine qualifications without conducting interviews, or cancel the RFQ/P or the Project, or any portion thereof at any time.
- 20.5.5. The Qualifications and Proposals process does not commit the County to award any contract, does not create any contractual relationship between Design-Build Entity and the County, and the County is not obligated to proceed with final design and construction Services with Design-Build Entity, or at all. If the County and Design-Build Entity are unable to agree upon a Final GMP, the Project Master Schedule and all work product including, but not limited to design documents and electronic Project files of Design-Build Entity become the property of the County and Design-Build Entity's Project documents and work product may be used by the County in any manner, including use for construction services for the Project with a different Design-Build Entity.
- 20.5.6. The County may refuse to accept any Qualifications and Proposals Package if the requested information and materials are not provided by the Qualifications and Proposals Deadline or are not provided at all. The Qualifications and Proposals Deadline will not be changed in order to accommodate supplementation of incomplete or late submissions, except as the County may otherwise determine, in its sole discretion, to be in the County's best interest.
- 20.5.7. The County intends to offer each of the Proposers who submitted a responsive Qualifications and Proposals but did not receive award of the Contract, a stipend to assist in defraying the costs of Qualifications and Proposals development. Each Design-Build Entity understands that the stipend may not reimburse it for all expenses incurred in preparing the Proposals. The County shall not be liable for any costs incurred by a Proposer in the preparation and submission of a Qualifications and Proposals Package to this RFQ/P, beyond the value of the stipend.
- 20.6. In evaluating Qualifications and Proposals, County will consider the information provided in each Qualifications, the Proposer's compliance with the prescribed requirements, such other data as may be requested in this Document 00 21 16 (Request for Qualifications - Instructions to Proposers), Proposer's interviews and presentations, and any other information provided or discovered prior to the Notice of Award.
- 20.7. The County may conduct any investigations the County deems necessary to assist in its evaluation of any Qualifications and Proposals and to establish the Proposer's responsibility, qualifications, and financial ability (and that of its proposed subconsultants, subcontractors, suppliers, and other persons and organizations) to perform and furnish the Work in accordance with the Contract Documents and Proposer's Qualifications, to County's satisfaction, and within the prescribed time. County has the right to communicate directly with Proposer's Surety regarding Proposer's bonds.
- 20.8. County will determine in its sole discretion whether a Qualifications and Proposals is responsive

and whether a Proposer is responsible.

- 20.9. The County will resolve any discrepancies between (a) the indicated sum of any column of figures and the mathematically correct sum of those figures in favor of the mathematically correct sum, and (b) written words and figures, or written words and numerals, in favor of the written words.

21. EVALUATION FACTORS.

21.1. The County will evaluate each Qualifications and Proposals based on two categories of "Factors," as described below. The first group of Factors, identified in Paragraph 21.2 below, will be evaluated on an "acceptable/unacceptable" basis with a Proposer needing to achieve "acceptable" ratings for each Factor to be considered for award of Contract. Any Proposer not achieving acceptable ratings for all of the Factors identified in Paragraph 21.2 below shall be deemed nonresponsive and shall be ineligible for an award of Contract. The second group of Factors, identified in Paragraph 21.3 below, will all be evaluated on a "points" basis. The qualifying Proposer with the highest points will be recommended for award of the Contract.

21.2. The Factors to be evaluated on a "acceptable/unacceptable" basis are as follows:

Letter Evaluation Factor Categories

A. Skilled Labor Availability & Safety Record acceptable / unacceptable

A. **Skilled Labor Availability & Safety Record.** Each Proposer who certifies truthfully in Document 00 45 40 (Design-Build Entity Certifications) that (i) it is a party to an agreement with a registered apprenticeship program approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five (5) years (provided that this graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five (5) years prior to enactment of Public Contract Code § 20133), and provides a copy of that agreement along with a certification that it is true and correct and in full force and effect, and (ii) its experience modification rate for the most recent three (3) year period is an average of 1.00 or less, and its average Total Recordable Injury/Illness rate and average lost work rate for the most recent three (3) year period do not exceed the applicable statistical standards for its business category (or if the Proposer is a party to an alternative dispute resolution system as provided for in Labor Code § 3201.5) shall be deemed "acceptable" as submitted in Document 00 45 10 (Design-Build Entity Registration and Safety Experience Form). All other Proposers shall be deemed nonresponsive and shall be ineligible for award of Contract.

21.3. The Factors to be evaluated based on numerical points are as follows:

Number	Evaluation Factor Categories	Maximum Points
1	Design-Build Entity Qualification Questionnaire	200
2	Project Management Design & Construction Expertise	500
3	Cost Evaluation	200
4	Interview/Presentation Questions	100
	Total	1000

1. **Design-Build Entity Qualification Questionnaire (200 points)** Proposers shall submit a Qualification Questionnaire (see Article 18 above). The elements of the Qualification Questionnaire shall be evaluated as follows:

- a. **Part I: Information about the Design-Build Entity and each of its members**
- b. **Part II: Essential requirements for the Design-Build Entity as a whole**
- c. **Part III: Scored questions for individual members of the Design-Build Entity and Design-Build Team members**
- d. **Part IV: Construction Experience and Reference Interview Questions**

Scoring of the Qualification Questionnaire will be prorated to a maximum of 200 points as established for this evaluation category.

- 2. **Project Management Design & Construction Expertise (500 Points)** Proposers shall submit a separate Bid Package with Project Management technical design & construction expertise (see **Article 18** above). The elements of that technical Bid Package shall be evaluated as follows:
 - a. **Technical Design & Construction Expertise** – 12% of total category points
 - b. **Project Management Team** - 12% of total category points
 - c. **Previous Projects** – 8% of total category points
 - d. **Team Integration** – 10% of total category points
 - e. **Project Approach** – 20% of total category points
 - f. **Project Schedule** – 10% of total category points
 - g. **Budget Management** – 14% of total category points
 - h. **Financial Management** – 14% of total category points
- 3. **Cost Evaluation (200 Points)** Proposers shall submit a separate fee proposal package with technical cost evaluation (see Article 18 above). The elements of that fee proposal package shall be evaluated as follows:
 - a. **Fee Proposal Form (Document 00 42 53)** - 80% of total category points.
 - b. **Exceptions to Contract Terms** – 20% of total category points
- 4. **Interview/Presentation (100 points)** Following the County's technical review of each Qualifications and Proposals and any RSI submissions, Proposers will be invited to orally present its Qualifications and Proposals to the County. During that Interview/Presentation, the County may, at its discretion, award up to one hundred (100) points based on its determination that a Qualifications and Proposals will provide value to the County for the design and construction of the Project.

22. NOTICE OF INTENT TO AWARD; QUALIFICATIONS AND PROPOSALS PROTEST.

- 22.1. The following is provided in the event that a qualified Proposer not awarded the Contract wishes to protest the request for Qualifications and Proposals process or protest the recommendation to award the Contract to the successful Proposer.
- 22.2. Any Qualifications and Proposals protest must be submitted in writing before 5:00 p.m. on the SEVENTH (7th) Day following the date the County issues a Notice of Intent to Award (not the date Design-Build Entity receives such notification of submitting an unsuccessful Qualifications and Proposals). The Qualifications and Proposals protest must be submitted to the office that has been designated for review of protest for this procurement (the "Protest Evaluator"). For this procurement, the Protest Evaluator is:
 - 22.2.1. GSA–Office of Acquisition Policy ("OAP")

ATTN: Chief Deputy, Administration
 OAP, General Services Agency
 1401 Lakeside Drive, 10th Floor, Oakland, CA 94612
 Email: GSA-BidProtests@acgov.org

- 22.3. A protest received on or after 5:00 p.m. is considered received as of the next Day. A protest received on or after 5:00 p.m. on the SEVENTH (7th) Day following the date of issuance of a Notice of Intent to Award will not be considered under any circumstances by the Protest Evaluator or its designee. The County will send an email acknowledging receipt of the protest; however, it is the responsibility of the protestor to confirm that the protest was timely received. All qualified Design-Build Entities will be notified if a protest is received.
- 22.4. The protest must contain a complete statement of the reasons and facts for the protest. The protest must refer to the specific portions of all documents that form the basis for the protest. The protest must include the company name, name, contact, address, email address, and telephone number of the person submitting the protest on behalf of the protesting party.
- 22.5. The Protest Evaluator, or its designee, will review and evaluate the protest and issue a written decision. The Protest Evaluator may, at its discretion, do any of the following: investigate the protest, obtain additional information, provide an opportunity to settle the protest by mutual agreement, and schedule a meeting(s) with the protesting Design-Build Entity and others (as appropriate) to discuss the protest. The decision on the protest must be finalized prior to the Board hearing considering award of the Contract for the Project.
- 22.6. Notification of the decision will be communicated by email and/or US Postal Service mail to the protester. Notification will be provided to all qualified Design-Build Entities when a decision has been made on the protest and whether the recommendation to the Board of Supervisors that the Notice of Intent to Award a Design-Build Contract will stand.
- 22.7. The decision on the Qualifications and Proposals protest by the Protest Evaluator may be appealed to the Auditor-Controller's Office of Contract Compliance & Reporting ("OCCR") located at 1221 Oak St., Room 249, Oakland, CA 94612, Email: OCCR@acgov.org, unless the OCCR determines that it has a conflict of interest in which case an alternate will be identified to hear the appeal and all steps to be taken by OCCR will be performed by the alternate. The unsuccessful Proposer whose Qualifications and Proposals is the subject of the protest, all qualified Design-Build Entities affected by the Protest Evaluator's decision on the protest, and the protester have the right to appeal if they feel the Protest Evaluator's decision is incorrect.
- 22.8. All appeals to the Auditor-Controller's OCCR must be in writing and submitted within SEVEN (7) calendar days following the issuance of the Protest Evaluator's decision, not the date the decision is received by the unsuccessful Proposer. An appeal received on or after 5:00 p.m. is considered received as of the next calendar day. An appeal received on or after 5:00 p.m. on the SEVENTH (7th) Day following the date of issuance of the decision by the Protest Evaluator will not be considered under any circumstances by the Auditor-Controller OCCR or its designee.
- 22.9. The appeal must specify the decision being appealed and all the facts and circumstances relied upon in support of the appeal. In reviewing protest appeals, the OCCR will not re-judge the Qualifications and Proposals. The appeal to the OCCR must be limited to a review of the Request for Qualifications and Proposals process to determine if the contracting department materially erred in following the RFQ/P or, if applicable, County contracting policies or other laws and regulations. The appeal to the OCCR must be limited to the grounds raised in the original protest and the written decision by the Protest Evaluator. As such, an unsuccessful Proposer is prohibited from stating new grounds for a protest in its appeal.
- 22.10. The Auditor-Controller's Office may overturn the results of a Qualifications and Proposals protest process for ethical violations by County staff, County selection committee members, subject matter experts, or any other County staff managing or participating in the Request for Qualifications and Proposals process, regardless of timing or the contents of a Qualifications and Proposals protest. The finding of the Auditor-Controller's OCCR is the final step of the protest process. A copy of the finding of the Auditor-Controller's OCCR will be furnished to the appellant.
- 22.11. The finding on the appeal will be issued before the Notice of Award is published.

22.12. The procedures and time limits set forth in this Article 22 are mandatory and are each qualified Design-Build Entity's sole and exclusive remedy in the event of a Qualifications and Proposals protest/appeal. A qualified Design-Build Entity's failure to timely complete the protest/appeal procedures will be deemed a failure to exhaust administrative remedies. Failure to exhaust administrative remedies, or failure to comply otherwise with these procedures, will constitute a waiver of any right to further pursue a Proposal protest/appeal, including filing a Government Code Claim or legal proceedings.

23. ANNOUNCEMENT OF NOTICE OF AWARD.

If a Contract award is made, County shall publicly announce the award of the Contract by issuing Document 00 51 10 (Notice of Award), by posting the same in the Office of the County, and by emailing a copy of Document 00 51 10 (Notice of Award) to all parties who requested that the County provide such notice. The Notice of Award shall include, at a minimum, all of the following: (1) the name of the Proposer to whom the award was made; (2) a written decision supporting the Contract award which states the basis of the award; and (3) the County's second and third ranked Proposers.

24. POST NOTICE OF AWARD REQUIREMENTS.

24.1. After issuance of Document 00 51 10 (Notice of Award), the successful Proposer shall submit the following documents to County before 5:00 p.m. of the tenth (10th) Day following Proposer's receipt of Document 00 51 10 (Notice of Award). Execution of the Contract depends upon approval of these documents:

24.1.1. Document 00 52 00 (Agreement): To be executed by the successful Proposer. Submit three (3) fully executed counterparts, each bearing all required original signatures. Proposer shall provide evidence that each signatory is authorized by the contracting entity to bind the entity to the Agreement.

24.1.2. Document 00 61 13.13 (Performance Bond): To be executed by successful Proposer and its Surety, in the penal amount of the Initial GMP/Contract Sum as set forth in Document 00 61 13.13 (Performance Bond).

24.1.3. Document 00 61 13.16 (Payment Bond): To be executed by successful Proposer and its Surety, in the penal amount of the Initial GMP/Contract Sum as set forth in Document 00 61 13.16 (Payment Bond).

24.1.4. Document 00 65 36 (Project Warranty and Correction Guarantee): To be executed by successful Proposer, in the form set forth in Document 00 65 36 (Project Warranty and Correction Guarantee).

24.1.5. Insurance forms, documents, certificates, and endorsements required by Document 00 73 16 (Insurance Requirements).

24.1.6. The documentary evidence received or generated by successful Proposer in preparation of your Qualifications, as set forth in Document 00 54 27 (Escrow Bid Documents).

24.1.7. Any other item specified in Document 00 51 10 (Notice of Award).

24.2. County has the right to confirm the Performance Bond and Payment Bond by communicating directly with the Construction Performance Bond and Payment Bond Surety(ies) proposed by successful Proposer. Proposer's Surety(ies) must be satisfactory to County. Corporate sureties on the bonds required by this document and on bonds accompanying Qualifications and Proposals shall be Admitted Surety Insurers, duly licensed to conduct business in the State of California and shall have an A.M. Best Company financial rating of A-7 or better.

25. PUBLIC RECORDS ACT REQUESTS.

25.1. Pursuant to the California Public Records Act (California Government Code § 7920.000 et seq.,

the "CPRA"), after the County completes its evaluation of all Qualifications and Proposals, the County will make available to the public: Proposers' Qualifications and Proposals (to the extent opened); all correspondence and written questions submitted during the Qualifications and Proposals period; all Qualifications and Proposals submissions opened in accordance with the procedures of this Document 00 21 16 (Request for Qualifications and Proposals - Instructions to Proposers); and all subsequent Qualifications and Proposals evaluation information and/or documents. Any Qualifications and Proposals submissions not opened by the County will remain sealed and will be returned to the submitting Proposer. Except as otherwise required by law, County will not disclose information that Proposer has specifically identified and marked "CONFIDENTIAL," on the basis that Proposer deems the information exempt from disclosure as containing trade secrets or proprietary financial information. Blanket-type identification by designating whole pages or sections as confidential shall not be permitted and shall be invalid. The specific confidential information must be clearly identified as such.

- 25.2. Upon County's receipt of a request for records under the CPRA seeking information marked "CONFIDENTIAL", County will evaluate whether the designation is supported by the laws concerning trade secrets or proprietary financial information. If the County determines that such designation is not supported by the law, it will notify the Proposer involved within ten (10) Business Days after receipt of the request of a specific time when the records will be made available for inspection. If the Proposer continues to believe the information is not subject to public disclosure under the CPRA, Proposer may seek an order from a court of competent jurisdiction regarding production of the materials; otherwise, County will without restriction make such documents available to the extent required by applicable law. If disclosure is required under the California Public Records Act or otherwise by law (despite Design-Build Entity's request for confidentiality), the County shall not in any way be liable or responsible for the disclosure of any such records part thereof.
- 25.3. Information disclosed in the Qualifications and Proposals and attendant submissions are the property of County unless Proposer makes specific reference to data that is considered proprietary. Subject to the requirements of the CPRA, reasonable efforts will be made to prevent the disclosure of information except on a need-to-know basis during the evaluation process.

26. COSTS OF PREPARING QUALIFICATIONS AND PROPOSALS.

Proposers are solely responsible for the cost of preparing their Qualifications and Proposals, except as provided in Paragraph 20.3.7 of this Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers).

27. DEFINITIONS.

Except as otherwise defined herein, all abbreviations and definitions of capitalized terms used in this RFQ/P are set forth in Document 01 42 00 (References and Definitions). END OF DOCUMENT

DOCUMENT 00 22 19

**ELATION APPLICATION AND PROJECT STABILIZATION/
COMMUNITY BENEFITS AGREEMENT**

SECTION I

1. PURPOSE

- 1.1 By submitting a Statement of Qualifications and Proposals, Proposers acknowledge and agree to all Document 00 22 19 provisions.
- 1.2 In the event of conflict between the terms of this Document 00 22 19 and Document 00 73 49 (Project Stabilization /Community Benefits Agreement (“PSCBA”), the terms of the PSCBA shall take priority.

2. APPLICATION

- 2.1 The provisions outlined in this Document 00 22 19 apply to the Contract for the construction portion of the Work of the above-referenced African American Wellness Hub Project.

3. HIRING OF LOCAL APPRENTICES, YOUTH, UNEMPLOYED, AND UNDEREMPLOYED RESIDENTS (FOR PROJECTS OVER \$125K)

- 3.1 The County of Alameda (“County”) strongly encourages the hiring of local apprentices, youth, unemployed, and underemployed County residents to complete the construction Work required for this Project. Those firms that can demonstrate the ability and willingness to provide jobs required to complete this Project to local apprentices, youth, unemployed, and underemployed County residents should include such evidence in their Qualifications and Proposal.

4. NONDISCRIMINATION

- 4.1 The Design-Build Entity shall comply with the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964 and shall not, in regard to any position for which an employee or applicant for employment is qualified, discriminate against any employee or applicant for employment because of race, creed, color, religion, disability, sex (including pregnancy, sexual orientation, or gender identity), political affiliation, national origin, age (40 or older), and genetic information (including family medical history) or by any other non-merit factors be otherwise subjected to discrimination. The Design-Build Entity shall ensure applicants are employed and that employees are treated during employment without regard to their race, age, religion, Vietnam Era Veteran’s status, political affiliation, or any other non-merit factors. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other terms of compensation; and selection for training, including apprenticeship. The Design-Build Entity agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 4.2 Design-Build Entity shall, in all solicitations or advertisements for employees placed on behalf of the County, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, disability, sex (including pregnancy, sexual orientation, or gender identity), national origin, age, religion, Vietnam Era Veteran’s status, political affiliation, genetic information, or any other non-merit factors.

SECTION II

CONTRACT COMPLIANCE REQUIREMENTS

1. APPLICATION

1.1 The following provisions shall apply to all contracts for the construction Work of the Project.

2. COUNTY CONTRACT COMPLIANCE SYSTEM

2.1 County utilizes the Elation Systems contract compliance application as part of its commitment to assist contractors to comply with certain legal and contractual requirements. The ("Elation Application"), a secure web-based computer system, was implemented to monitor compliance and to track and report certified payroll and payment participation in County contracts.

2.2 The Design-Build Entity, and all participating Subcontractors awarded contracts as a result of the Qualifications process for this Project are required to use the Elation Application to submit payroll and payment information including, but not limited to, weekly certified payrolls, monthly progress payment reports, and other information related to project progress. Use of the Elation Application, support, and training are available at no charge to Design-Build Entities and Subcontractors participating in County contracts.

2.3 Upon Contract award:

2.3.1 The County will provide Design-Build Entities and Subcontractors participating in any Contract awarded as a result of this Qualifications process, a code that will allow them to register and use the Elation Application free of charge.

2.3.2 The Design-Build Entity should schedule a representative from their respective office/company, along with each of their Subcontractors, to attend Elation Application training.

2.3.2.1 Free Elation Application training session videos are available online within the Elation Systems application.

2.4 It is the Design-Build Entity's responsibility to ensure that they and their Subcontractors are registered and trained as required to utilize Elation Systems.

2.4.1 For systems support visit Elation Systems online at <http://www.elationsys.com/> or call (925) 924-0340.

2.4.2 If you have questions regarding the utilization of the Elation Application, please contact the County Sr. Project Manager.

3. MEETINGS

3.1 After the award of the Contract and prior to beginning Work, the County may hold a preconstruction conference at which representatives of the Design-Build Entity and of each Subcontractor must attend. As it becomes necessary during the performance of the Contract, the County may call meetings of the Design-Build Entity and pertinent Subcontractors as needed for PSBCA clarification and compliance.

4. INFORMATION AND RECORDS

- 4.1 For the purposes of determining compliance with the Elation Application, the Design-Build Entity shall provide the County with access to all records and documents that relate to Elation Application Payroll and Payment entries. To the extent permitted by applicable law, proprietary information will be safeguarded.

SECTION III

1. OUTREACH

- 1.1 To promote the Design-Build Entity and Subcontractors in their efforts to develop their Qualifications and Proposals and/or contracting relationships, the County will:
- 1.1.1 E-mail the Qualifications and Proposal solicitations to vendors in the County Vendor Database and other sources. When required by law, advertise the Project once a week for at least two (2) consecutive weeks in a newspaper of general circulation in the county where the Project is located, trade organizations, and chambers of commerce, and plan rooms. Notice of this Project will also be posted on the County Current Contracting Opportunities and Calendar of Events websites (see website URL addresses below).
 - 1.1.2 Incorporate a networking and informational component in the mandatory Qualifications and Proposal walk/site visit.
 - 1.1.3 E-mail the list of attendees from the mandatory Qualifications and Proposal walk to each attendee when issuing the first Addendum for the Project and post the attendance and first Addendum on the Current Contracting Opportunities website.

2. DESIGN-BUILD ENTITY RESOURCES

The following sources may be contacted for assistance in soliciting subcontractor participation:

Alameda County Contractor Technical Assistance Program (CTAP)

Carol Henry, CTAP Program Manager (Merriwether & Williams Insurance Services)

(510) 879-3285, carol@imwis.com

Asian American Contractors Association

Juliana Choy Sommer and Stanford Chiang, Executive Committee Members

(415) 928-5910, www.aaca-sf.com

Western Regional Minority Supplier Development Council (WRMSDC) – MBE certifications only

– (510) 686-2555, www.wrmsdc.org

Women’s Business Enterprise National Council (WBENC) – WBE certifications only -

www.wbenc.org

California Public Utilities Commission (CPUC) The Supplier Clearinghouse

MBE and WBE vendors and certifications, www.thesupplierclearinghouse.com

Alameda County Transportation Commission

LBE and SLBE vendors and certifications, <https://www.alamedactc.org/get-involved/contract-equity/>

Visit the following County of Alameda GSA websites for:

CERTIFIED SMALL LOCAL VENDORS	http://www.acgov.org/sleb_query_app/gsa/sleb/query/slebresultlist.jsp?smEmInd=C
CURRENT CONTRACT OPPORTUNITIES	http://www.acgov.org/gsa_app/gsa/purchasing/bid_content/contractopportunities.jsp
UPCOMING CONTRACT OPPORTUNITIES	https://gsa.acgov.org/do-business-with-us/contracting-opportunities/
CALENDAR OF EVENTS	http://www.acgov.org/calendar_app/DisplayListServlet?site=Internet&ag=GSA&ty=PUR
COUNTY OF ALAMEDA HOME PAGE	http://www.acgov.org/index.htm

END OF DOCUMENT

DOCUMENT 00 31 32

GEOTECHNICAL DATA AND EXISTING CONDITIONS

This document sets forth the terms and conditions under which a Proposer may review, study, use, or rely upon geotechnical data for, or areas near, the **African American Wellness Hub Project** site (the "Site") and existing conditions information concerning the Site. This document, the available geotechnical data, reports, and the supplied existing conditions information are not Contract Documents and do not show new Work to be constructed, rather, they show existing conditions that Proposer will have to address as part of its design, preconstruction, and construction planning and operations.

1. REPORTS AND INFORMATION.

- 1.1 County, its consultants, and prior contractors may have collected documents that provide a general description of the Site and conditions of the Work. These documents may consist of geotechnical reports for and around the Site, contract specifications, as-built drawings, utility drawings, and information regarding Underground Facilities. These reports, documents, and other information are not part of the Contract Documents, but rather are "for information only."
- 1.2 Proposers must inspect all available geotechnical reports and all information regarding existing conditions that have been provided by the County.
- 1.3 The following reports and information regarding existing conditions and Underground Facilities at or contiguous to the Site are provided as non-Contract Document exhibits for Proposer's convenience:
 - 1.3.1 California Environmental Quality Act (CEQA)
 - 1.3.1.1 See Criteria Documents
 - 1.3.2 Geophysical Investigation
 - 1.3.2.1 None
 - 1.3.3 Geotechnical Reports
 - 1.3.3.1 None
 - 1.3.4 Soil and Groundwater Management Plan
 - 1.3.4.1 None
 - 1.3.5 Existing Building Plans
 - 1.3.5.1 None
- 1.4 The reports, documents, and information described in Paragraph 1.3 of this Document 00 31 32, if any, are not part of the Contract Documents. However, for Proposer's convenience, a copy of the documents has been provided.

2. USE OF INFORMATION ON EXISTING CONDITIONS.

- 2.1 Above-Ground Existing Conditions. Under no circumstances shall County be deemed to make a warranty or representation of visible existing above-ground conditions, as-built conditions, or other above-ground actual conditions verifiable by reasonable independent investigation. These conditions are verifiable by the Proposer by the performance of its own independent investigation, which the Proposer must perform prior to submitting a Qualifications and Proposal. The Proposer must not rely on the information supplied by the County regarding existing above-ground conditions. By submitting a Qualifications and Proposal, Proposer represents and agrees that in submitting its Qualifications and Proposal, it is not relying on any information regarding existing above-ground conditions supplied by County to the extent such conditions are verifiable by reasonable independent investigation.
- 2.2 Underground Facilities. Information supplied regarding existing Underground Facilities at or contiguous to the Site is based on information furnished to County by others (e.g., the owners or builders of such Underground Facilities or others). For those Underground Facilities that are owned by County, County will be responsible for the accuracy of information regarding Underground Facilities and for any conditions which materially differ from those indicated in the information provided by the County, provided that Proposer has conducted an independent review of the information provided by the County and discrepancies were not apparent. Proposer is responsible for understanding and interpreting all information on Underground Facilities other than those owned by County and County agrees that Proposer is not responsible for the accuracy of such information or reports. In reviewing any information regarding Underground Facilities, Proposer is responsible for making all reasonable interpretations and drawing all reasonable conclusions from that information but shall be solely responsible for any unreasonable interpretations or conclusions drawn therefrom. Compensation to Design-Build Entity for unknown differing site conditions shall be allowed as is provided for in the Contract Documents.

3. LIMITED RELIANCE PERMITTED ON CERTAIN INFORMATION.

- 3.1 Geotechnical Data. By submitting a Qualifications, Proposer represents and agrees that in submitting its Qualifications, it is not relying on any geotechnical data supplied by County, except as specifically set forth herein.
- 3.2 The Proposer shall not rely upon the accuracy of the “technical data” contained in the geotechnical reports and drawings identified above, if any, and should only be used for information purposes only.

4. INVESTIGATIONS.

- 4.1 As part of the services for design and preconstruction before submitting a Final GMP Proposal, the Design-Build Entity selected for award shall conduct its own visual inspection of the Site and will be responsible for performing all other investigations that Proposer deems are necessary to make its Final GMP Proposal and for performing and furnishing Work in accordance with the time, price, and other terms and conditions of the Contract Documents. The selected Design-Build Entity shall not rely upon the geotechnical and existing conditions data provided by the County. The design shall not be developed based solely upon the information provided by the County. The selected Design-Build Entity will be responsible for obtaining and reviewing such additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, as

deemed necessary by its geotechnical engineer, that may affect structural design, cost, progress, performance, or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by the Proposer and safety precautions and programs incidental thereto, and for performing reasonable On Site inspections for visible conditions, which the Proposer deems necessary to make its Final GMP Proposal and for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of Contract Documents.

5. **ACCESS TO SITE.**

5.1 NOT USED.

END OF DOCUMENT

DOCUMENT 00 42 53

PROPOSAL FORM AND NON-COLLUSION DECLARATION

To be submitted by the time and date indicated as the Qualifications and Proposal Deadline in Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers):

COUNTY OF ALAMEDA
ALAMEDA COUNTY GENERAL SERVICES AGENCY

To: HONORABLE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA

Re: **PROJECT NO. 22016 PROGRESSIVE DESIGN-BUILD SERVICES FOR THE COUNTY OF ALAMEDA – AFRICAN AMERICAN WELLNESS HUB PROJECT**

1. The undersigned Proposer proposes and agrees that, if this Proposal (including the Qualifications and Proposal Package) is accepted, Proposer will enter into an agreement with the County of Alameda acting by and through its authorized agent, County of Alameda General Services Agency, in the form included in the Contract Documents as Document 00 52 00 (Agreement), to perform and furnish all Work authorized by County as Specified or indicated in the Contract Documents, or as modified and expressly approved in writing by the County, for the Contract Sum and within the Contract Time indicated in this Proposal and in accordance with all other terms and conditions of the Contract Documents.
2. The Proposer by its signature below, accepts all the terms and conditions of the Contract Documents, unless modified and expressly approved in writing by the County. The Proposer accepts all the terms and conditions of Document 00 21 16 (Request for Qualifications and Proposal – Instructions to Proposers) and all Addenda thereto Addendum Numbers: _____. The Contract Sum set forth in the Initial Guaranteed Maximum Price (Initial GMP) Proposal (submitted in Paragraph 6 below), **includes:**
 - 2.1 The County-Specified Allowances for Direct Construction Cost of Phase II Construction Work, Design Contingency, and Cost Escalation to Midpoint of Construction, in the LUMP SUM AMOUNT of **\$16,767,711** as provided in Paragraph 6 below;
 - 2.2 Design-Build Entity's FIXED PERCENTAGE RATES for Indirect Costs of Construction will be applied to the Direct Costs of Construction (which shall be **\$16,757,711** for the purpose of calculating the Initial GMP);
 - 2.3 The LUMP SUM PRICE provided in Paragraph 6 below for the Design-Build Entity's price to obtain Builder's Risk "All Risk" insurance to indemnify the County for all damage to the Work for the risks Specified in Paragraph 7 of Document 00 73 16 (Insurance Requirements), which evidence of satisfactory Builder's Risk insurance coverage shall be provided to the County prior to execution of the Contract and within the time Specified in Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers).; and
 - 2.4 Design-Build Entity's Lump Sum Amount Proposal Price for A/E Design & Engineering Fees through acceptance of Final GMP and for Design-Build Entity/Subcontractor Fees for Preconstruction Services through acceptance of Final GMP; and
 - 2.5 Design-Build Entity's FIXED PERCENTAGE RATES applied to Direct Costs and Indirect Costs including the cost of Builder's risk insurance for Phase II A/E Design & Engineering Fees, Design-Build Entity/Subcontractor Fees, Preconstruction Services from Final GMP through Construction Administration and Closeout,

- 2.6 The total of the above amounts are guaranteed by Design-Build Entity not to exceed Twenty Three Million Sixty Nine Thousand Thirty One **Dollars (\$23,069,031)** (“Initial GMP” or “IGMP”), which will remain subject to acceptance for one hundred twenty (120) Days after the Qualifications and Proposal Submission Deadline, unless a greater period is authorized by Document 00 21 16 (Request for Qualifications and Proposal – Instructions to Proposers) and may not be withdrawn during that time period. The Proposer will sign and submit Document 00 52 00 (Agreement), and other documents required by Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers) by the time and in the manner set forth therein.
3. In submitting this Proposal Form, the Proposer represents that:
- 3.1 Proposer has examined all the Contract Documents, and
- 3.2 Based on that examination, Proposer proposes and agrees to fully perform the County authorized Work within the time stated and in strict accordance with the Contract Documents for the following sum of money listed in this Document 00 42 53 (Proposal Form).
4. Proposer must provide the following information in the same separate envelope with Document 00 42 53 (Proposal Form) for Proposal evaluation purposes.
- 4.1 Proposer shall submit a Letter of Exceptions to Project Manual and Contract Documents, if any, as identified in Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers).
5. All Qualification and Proposal Package items must be filled in completely. Proposal items of Work for the Initial GMP are described in the Scope of Work Summary in the County’s Criteria Documents. The price breakdown information included in this Document 00 42 53 (Proposal Form) is intended for Proposal evaluation and does not reflect any work sequencing Design-Build Entity may choose to pursue or suggested work sequencing requirements described in Document 01 12 16 (Work Sequence). Quote in numerals only unless words are specifically requested.
6. Design-Build Entity Cost Proposal for Initial Guaranteed Maximum Price:

A. County-Specified Allowances for Direct Cost of Phase 2 Construct Work	
1. Foundations	\$422,550
2. Basement Construction	\$328,320
3. Superstructure	\$1,873,069
4. Enclosure	\$1,895,088
5. Roofing	\$250,230
6. Interior Construction	\$1,011,524
7. Stairs	\$790,000
8. Interior Finishes	\$1,211,115
9. Conveying	\$335,000
10. Plumbing	\$330,806
11. HVAC	\$1,213,552
12. Fire Protection	\$177,530
13. Electrical	\$1,909,007
14. Equipment	\$327,530
15. Furnishing	\$1,051,398
16. Site Preparation	\$313,178
17. Site Improvement	\$100,250
18. Site Mechanical Utilities	\$100,000

19. Site Electrical Utilities		\$50,000
20. Design Contingency		\$1,369,015
21. Cost Escalation to Midpoint of Construction		\$1,707,949
	Subtotal Allowance	\$16,767,111
B. <u>Design-Build Entity's Fixed Percentage Rates For Indirect Costs of Construction</u>		
Payment and Performance Bond Premium (Percentage and Cost)	_____ %	\$
Insurance Policy Premium EXCLUDING Builder's Risk (Percentage and Cost)	_____ %	\$
General Conditions Cost (Percentage and Cost)*	_____ %	\$
Construction Overhead and Profit (Percentage and Cost)	_____ %	\$
C. <u>Design-Build Entity' lump sum price to obtain Builder's Risk "All Risk:</u> Insurance to indemnify the County for all damage to the Work for the risks Specified in Paragraph 7 of Document 00 73 16 (Insurance Requirements), which evidence of satisfactory Builder's Risk insurance coverage shall be provided to the County prior to execution of the Contract and within the time specified in Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers).		
	Subtotal Indirect Costs	\$
	Total Construction Cost (Allowances & Indirect Costs)	\$
D. <u>Phase I Design & Preconstruction Services</u>		
a. A/E Design & Engineering Fees through acceptance of Final GMP		\$
b. Design-Build Entity/Subcontractor Fees for Preconstruction Services through acceptance of Final GMP		\$
	Lump Sum Amount Proposal Price – Phase I Design & Preconstruction Services	\$
E. <u>Phase II Remaining Design, Preconstruction Services, & Construction Administration through Closeout</u>		
a. A/E Design & Engineering Fees – Acceptance of Final GMP through Construction Administration and Closeout (Percentage and Cost)	_____ %	\$
b. Design-Build Entity/Subcontractor Preconstruction Fees – Acceptance of Final GMP through Construction Administration and Closeout (Percentage and Cost)	_____ %	\$
	Subtotal Phase II Remaining Design, Preconstruction Services & Construction Administration through Closeout	\$
	Total Construction Cost with Design (Initial Guaranteed Maximum Price)	\$

DBE shall include a proposed staffing plan with categories of costs, and any factual assumptions, which form the basis for pricing which form the basis for pricing.

Design-Build Entity must submit, utilizing Attachment A of this Proposal Form and Non-Collusion Declaration, written documentation evidencing a firm contractual commitment to meet the minimum 20% SLEB participation requirement of the amount listed as total design services

Percentages for Indirect Costs calculated above are to be based on the Allowances for Direct Cost of Construction from the Project Conceptual Budget Cost Plan attached as an Exhibit to the Criteria Documents and as defined in Document 01 21 00 (Allowances), and the duration of Design-Build Entity's proposed Project Master Schedule submission developed based on the Project Milestone schedule. The stated percentages will be fixed percentages, which shall be used to calculate Design-Build Entity's markup rates for the above described Indirect Costs at the time of Final Guaranteed Maximum Price and for payments to Design-Build Entity with such rates applied to the Design-Build Entity's Direct Costs of the Work for payment.

Percentages for Phase II Remaining Design and Preconstruction calculated above are to be based on the Allowances for Direct Cost of Construction and the Indirect Costs of Construction calculated above including the cost of Builder's risk insurance.

7. The undersigned understands that County reserves the right to reject this Proposer's Statement of Qualifications and Proposals, or all Statements of Qualifications and Proposals, in its sole discretion.
8. If written notice of the acceptance of this Proposer's Statement of Qualifications and Proposals, referred to as the Notice of Award, is mailed or delivered to the undersigned Proposer within the time described in Paragraph 2 above or at any other time thereafter before it is withdrawn, the undersigned agrees to execute and deliver the documents required by Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers) including, but not limited to, Documents 00 52 00 (Agreement), 00 61 13.13 (Performance Bond), and 00 61 13.16 (Payment Bond), and insurance certification, all within the time and in the manner specified in Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers).
9. Notice of Award or request for additional information may be addressed to the undersigned Proposer at the address set forth below.
10. The undersigned Proposer agrees to commence Work under the Contract Documents on the date established by Document 00 55 00 (Notice to Proceed) and to complete all Work by the Proposer's specified completion dates included in its Qualifications and Proposal Package, which shall be considered by County when establishing the duration to achieve Substantial Completion of the Work. Phase I of Work will include services for Design-Build Entity to develop the design and preconstruction activities sufficient to establish a Final GMP for the Project. Upon agreement of the Final GMP for the Work, the County, at its sole discretion, will authorize Design-Build Entity in writing to proceed with the remaining design, preconstruction, and construction activities sufficient to complete and closeout the Project, consistent with the Final GMP. Proposer's specified Substantial Completion date shall be included in Document 00 52 00 (Agreement) subject to adjustment upon County's acceptance of the Final GMP, in its sole discretion.
11. The undersigned Proposer agrees that, in accordance with Document 00 72 53 (General Conditions), liquidated damages for failure to complete all Work under the Contract Documents within the time specified therein shall be as set forth in Document 00 52 00 (Agreement).
12. **EXISTING CONDITIONS:** The undersigned has examined the location of the proposed Work and is familiar with the Site and surroundings, the County's Criteria Documents, including but not limited

to the Scope of Work Summary and the Project Manual, including all attachments and exhibits referenced therein, the Contract Documents, and the local conditions at the place where the Work is to be done. Design-Build Entity shall satisfy itself through its own investigation as to the actual conditions to be encountered.

13. **UTILITIES:** Design-Build Entity shall be responsible at its own cost for any and all work, expense, delay, or special precautions caused or required by the existence or proximity of utilities encountered in performing the work, including without limitation thereon, repair of any or all damage and all hand or exploratory excavation and potholing required during Pre-Qualifications and Proposal Site investigation. The Proposer is cautioned that such utilities may include gas/fuel, communication cables or electrical cables which may be high voltage, and the ducts enclosing such cables, and when working or excavating in the vicinity thereof, the special precautions to be observed at its own cost shall also include the following: All such cables and their enclosure ducts shall be exposed by careful hand excavation so as not to damage the ducts or cables, nor cause injury to persons, and suitable warning signs, barricades and safety devices shall be erected as necessary or required.
14. **CHECKING OF STATED FIGURES:** The undersigned has carefully checked all of its stated figures and understands that the County will not be responsible for any errors or omissions on the part of the undersigned in calculating pricing included in this Proposal.
15. **PRICE PROPOSAL INTEGRITY:** The undersigned hereby certifies that this Proposal is genuine and not sham or collusive, or made in the interest of or on behalf of any person not herein named, and that the undersigned has not directly induced or solicited any other entity to put in a sham Proposal, or any other person, firm, or corporation to refrain from submitting a price proposal, and that the undersigned has not in any manner sought by collusion to secure for themselves an advantage over any other entity interested in submitting a Proposal.
16. **NEGOTIATIONS:** The Proposal pricing, together with all required parts of Design-Build Entity's Qualifications and Proposal Package, will be evaluated by the County pursuant to the evaluation criteria set forth in Document 00 21 16 (Request for Qualifications and Proposal – Instructions to Proposers). The County reserves the right to hold good faith discussions or negotiations concerning the award of the Contract, starting with the highest ranked Design-Build Entity.
17. The names of all persons interested in the foregoing Qualifications and Proposal as principals are:

NOTE: If Proposer or other interested person (including any partner or joint venturer of any partnership or joint venture Proposer, respectively) is a corporation, give the legal name of the corporation, the state where incorporated, and the names of the president and secretary thereof; if a partnership, give the name of the firm and the names of all individual partners composing the firm; if Proposer or other interested person is an individual, give Proposer's first and last names in full.

NOTE: If the Proposer is a corporation, set forth the legal name of the corporation together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If the Proposer is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership. By signing this Proposal, all signers represent and warrant that they are authorized to sign this Proposal on behalf of Proposer.

Design-Build Entity: _____

**NON-COLLUSION DECLARATION TO BE EXECUTED BY
PROPOSER AND SUBMITTED WITH PRICE PROPOSAL**

State of California)
County of _____) ss

_____, being first duly sworn, deposes and says that he or she is _____ of _____ the party making the foregoing price proposal that the price proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation; that the price proposal is genuine and not collusive or sham; that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham price proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any proposer or anyone else to put in a sham price proposal, or that anyone shall refrain from proposing; that the proposer has not in any manner, directly, or indirectly, sought by agreement, communication or conference with anyone to fix the price proposal of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the price proposal, or of that of any other proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the price proposal are true; and, further, that the proposer has not, directly or indirectly, submitted his or her price proposal or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, price proposal depository, or to any member or agent thereof to effectuate a collusive or sham price proposal.

Dated: _____

Signed: _____

NOTE: THIS FORM MUST BE NOTARIZED

I. CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____) ss.

On the date written below, before me, the undersigned Notary Public, personally appeared the person(s) signing above for Design-Build Entity, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Dated: _____

[NOTARIAL SEAL]

Notary Public

END OF DOCUMENT

DOCUMENT 00 42 53A

LEVINE ACT STATEMENT — PARTY DISCLOSURE FORM

1. The Levine Act. California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an elected officer of a local government agency from participating in a proceeding involving a license, permit, or other entitlement for use if the official receives political contributions totaling more than \$250.00 in the twelve (12) months preceding the pendency of the matter, and for twelve (12) months following the final decision, from a party or a participant in the proceeding.

2. Who is Covered. These prohibitions also apply to the party and participant's agents, and if the party or participant is a closely held corporation, partnership, sole proprietorship, or other entity, to the majority shareholder or majority investor.

For the County of Alameda, the directly elected, and appointed officers as well as any alternates to elected or appointed officers and any candidates for elective office are subject to the Levine Act, which officers include, but are not limited to, the members of the board of supervisors, sheriff, district attorney, auditor/controller, treasurer/tax collector, and assessor. The list of individuals currently holding these offices is available on the County website at <http://www.acgov.org/>.

3. Definitions. A “party” is defined in the Levine Act as any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use. (Gov’t Code § 84308(a)(1).)

A “license, permit, or other entitlement for use” means all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises. (Gov’t Code § 84308(a)(5).)

A “participant” is defined by the Levine Act as a person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision. A person actively supports or opposes a decision in a proceeding if they lobby in person the officer or employees of an agency, testify in person before the agency, or otherwise act to influence the officers of the agency. (Gov’t Code § 84308(a)(2).)

4. The Levine Act applies to this Qualifications and Proposals procurement and the resulting Contract with the County of Alameda. Submitting a Qualifications and Proposals for this procurement triggers your obligation (as a party) to disclose political contributions made to County of Alameda officers.

5. Disclosure. The Levine Act requires a party to a proceeding to disclose on the record of the proceeding any contributions totaling more than \$250.00 within the preceding 12-months they or their agent made to an officer. (Gov’t Code § 84308(e)(1).) The party must also make a disclosure at the time the application is filed, or the proceeding otherwise commenced, and no later than thirty (30) days after a contribution is made at any stage in the proceeding. (2 CCR § 18438.8(b).) The Levine Act prohibits a party, or the agent of a party, to a proceeding from contributing more than \$250.00 to any officer of the local agency during the preceding and for twelve (12) months after the date a final decision is rendered by the agency. (Gov’t Code Section 84308(e)(2).)

[Continued on next page.]

With this general information, please respond to the following question:

Have you or your company, or an agent on behalf of you or your company, made political contributions of more than \$250.00 to any County of Alameda officer in the twelve (12) months preceding the date you submitted your Qualifications and Proposal for this procurement?

Yes _____

No _____

If you answered yes, for each contribution you must provide the name the party or other person making the contribution, if any, the name of each recipient of the contribution, the amount of the contribution, and the date the contribution was made. Attach additional pages if necessary.

As noted above, you must refresh this disclosure statement no later than thirty (30) days after a contribution is made and on the record of the proceeding.

This form and refreshed versions of this form must be filed with your Qualifications and Proposal Package and for each subsequent contribution by email to : _____ at _____.

Authorized Signature

Date

Name

Title

Company Name

Party or Company Address

00 42 54

**DESIGN-BUILD ENTITY PASS / FAIL QUALIFICATION
QUESTIONNAIRE**

**County of Alameda
African American Wellness Hub
Project No. 22016**

**PART I: INFORMATION ABOUT THE DESIGN-BUILD ENTITY, ITS
MEMBERS, AND CORE ORGANIZATIONS**

IA CONTACT INFORMATION

Design Build Entity _____
Contact: Person: _____
Address: _____
Phone: _____ Email _____

Type of Entity (check one):

Corporation Partnership Sole Prop. Other Association

Member Firm(s) and Core Organizations		
Discipline	Name	CA License No.
General Contractor (GC)		
Architect of Record		
Civil Engineer		
Mechanical Engineer		
Electrical Engineer		
Plumbing Engineer		

PUBLIC RECORD

I.B INFORMATION ABOUT THE DESIGN BUILD ENTITY

Entity Name: _____
 Contact: Person: _____
 Address: _____
 Phone: _____ Email _____

Type of Entity (check one):

- Corporation Partnership Sole Prop. Other Association

- 1a. Date of entity incorporation, formation or commencement: _____
 b. State of formation or incorporation: _____
 c. How many people does your organization currently employ: _____
 d. If the entity is a **corporation or LLC**, please complete the following table; provide information for each officer of the corporation or individual(s) with 10% or more of the corporate stock and those officers that hold stock and will perform services for the Project (22164(b)(3)):

Position	Name	Years with Co.	% Ownership
President			
Vice-President			
Secretary			
Treasurer			

- e. If the entity is a **partnership**, please complete the following table; provide information for each partner who owns 10% or more of the firm and those officers that hold stock and will perform services for the Project (Public Contract Code (PCC) section 22164(b)(3)):

Position	Name	Years with Co.	% Ownership
General Partner			

f. If the entity is a **sole proprietorship**, please provide the name and social security number of the company owner:

Name	Social Security No.

g. If the entity is a **joint venture**, please complete the following table; provide information for each member of the joint venture and those officers that hold stock and will perform services for the Project (PCC section 22164(b)(3)):

Name of Firm	Name of Owner, General Partner, or President	% Ownership of Joint Venture

h. For each person listed in table 1d, 1e, 1f, or 1g, identify every construction company that the person has been associated with (as owner, general partner, limited partner, or officer) at any time during the last five (5) years:

NOTE: For this question, “owner” and “partner” refer to ownership of 10% or more of the business, or 10% or more of its stock, if the business is a corporation.

Name	Company	Position with Company	Dates of Employ.

2. Has there been any change in ownership of the Design Build Entity at any time during the last three (3) years?

NOTE: A corporation whose shares are publicly traded must only report a change in ownership of a controlling block of shares.

Yes No

If “yes,” explain:

3. Is the Design Build Entity a subsidiary, parent, holding company or affiliate of another design or construction firm?

NOTE: Include information about other firms if one firm owns 50% or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm.

Yes No

If “yes,” explain:

4. Are any of the Design Build Entity’s corporate officers, partners or owners associated with any other design or construction companies?

NOTE: Include name, address, and position information about each other firm in which an owner, partner, or officer of your firm holds a similar position.

Yes No

If “yes,” explain:

5. To the extent available, state the Design Build Entity’s gross revenues for each of the last six

2019: _____ **2020:** _____ **2021:** _____
2022: _____ **2023:** _____ **2024:** _____

6. Based on the financial statement required in Part II.A, provide the following information about the Design Build Entity:

Current Assets: \$ _____
Current Liabilities: \$ _____
Total Net Worth: \$ _____
Current Asset/Liability Ratio: \$ _____
Working Capital
(Current Assets – Current Liabilities) \$ _____

7. Has the Design Build Entity changed its name or license number in the past five (5) years?

Yes No

If “yes,” explain:

8. Has any owner, partner, or (for corporations) officer of the Design Build Entity operated a design or construction company under any other name in the last five (5) years?

Yes No

I.C INFORMATION ABOUT THE GENERAL CONTRACTOR

Entity Name: _____
 Contact: Person: _____
 Address: _____
 Phone: _____ Email _____

Type of Entity (check one):

- Corporation Partnership Sole Prop. Other Association

- 1a. Date of entity incorporation, formation or commencement: _____
 b. State of formation or incorporation: _____
 c. How many people does your organization currently employ: _____
 d. If the entity is a **corporation**, please complete the following table; provide information for each officer of the corporation or individual(s) with 10% or more of the corporate stock:

Position	Name	Years with Co.	% Ownership
President			
Vice-President			
Secretary			
Treasurer			

- e. If the entity is a **partnership**, please complete the following table; provide information for each partner who owns 10% or more of the firm:

Position	Name	Years with Co.	% Ownership
General Partner			

2. Has there been any change in ownership of the General Contractor at any time during the last three (3) years?

NOTE: A corporation whose shares are publicly traded must only report a change in ownership of a controlling block of shares.

Yes No

If “yes,” explain:

3. Is the General Contractor a subsidiary, parent, holding company or affiliate of another design or construction firm?

NOTE: Include information about other firms if one firm owns 50% or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm.

Yes No

If “yes,” explain:

4. Are any of the General Contractor’s corporate officers, partners or owners associated with any other design or construction companies?

NOTE: Include name, address, and position information about each other firm in which an owner, partner, or officer of your firm holds a similar position.

Yes No

If “yes,” explain:

5. State the General Contractor’s gross revenues for each of the last six years:

2019: _____ **2020:** _____ **2021:** _____
2022: _____ **2023:** _____ **2024:** _____

6. Based on the financial statement required in Part II.B, provide the following information about the General Contractor:

Current Assets: \$ _____
Current Liabilities: \$ _____
Total Net Worth: \$ _____
Current Asset/Liability Ratio: \$ _____
Working Capital
 (Current Assets – Current Liabilities) \$ _____

7. List all California construction license numbers, classifications and expiration dates of the California contractor licenses held by the General Contractor:

Yes No

Contractor License Number	Classification(s)	Expiration Date

8. If any of the General Contractor’s license(s) are held in the name of a corporation, partnership, or other entity, list below the names of the qualifying individuals(s) listed on the CSLB records who meet(s) the experience and examination requirements for each license.

Contractor License Number	Name of Qualifying Individual

9. Has the General Contractor changed its name or license number in the past five (5) years?

Yes No

If “yes,” explain:

10. Has any owner, partner, or (for corporations) officer of the General Contractor operated a design or construction company under any other name in the last five (5) years?

Yes No

If “yes,” explain:

11. Provide documentation from the General Contractor’s surety identifying the following:

Bonding Co./Surety:		Surety Agent:	
Agent Address:		Telephone #:	

12. List all other sureties (by name and with full address) that have written payment or performance bonds for the General Contractor during the last five (5) years, including the dates during which each wrote the bonds:

Date	Surety	Address
-------------	---------------	----------------

I.D INFORMATION ABOUT THE ARCHITECT

Entity Name: _____
 Contact: Person: _____
 Address: _____
 Phone: _____ Email _____

Type of Entity (check one):

- Corporation Partnership Sole Prop. Other Association

- 1a. Date of entity incorporation, formation or commencement: _____
 b. State of formation or incorporation: _____
 c. How many people does your organization currently employ: _____
 d. If the entity is a **corporation**, please complete the following table; provide information for each officer of the corporation or individual(s) with 10% or more of the corporate stock:

Position	Name	Years with Co.	% Ownership
President			
Vice-President			
Secretary			
Treasurer			

- e. If the entity is a **partnership**, please complete the following table; provide information for each partner who owns 10% or more of the firm:

Position	Name	Years with Co.	% Ownership
General Partner			

2. Has there been any change in ownership of the Architect at any time during the last three years?

NOTE: A corporation whose shares are publicly traded must only report a change in ownership of a controlling block of shares.

Yes No

If “yes,” explain:

3. Is the Architect a subsidiary, parent, holding company or affiliate of another design or construction firm?

NOTE: Include information about other firms if one firm owns 50% or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm.

Yes No

If “yes,” explain:

4. Are any of the Architect’s corporate officers, partners or owners associated with any other design or construction companies?

NOTE: Include name, address, and position information about each other firm in which an owner, partner, or officer of your firm holds a similar position.

Yes No

If “yes,” explain:

5. State the Architect's gross revenues for each of the last six years:

2019: _____ **2012:** _____ **2021:** _____
2022: _____ **2023:** _____ **2024:** _____

6. Based on the financial statement required in Part II.C, provide the following information about the Architect:

Current Assets: \$ _____
Current Liabilities: \$ _____
Total Net Worth: \$ _____
Current Asset/Liability Ratio: \$ _____
Working Capital
(Current Assets – Current Liabilities) \$ _____

7. Has the Architect changed its name or license number in the past five (5) years?

Yes No

If "yes," explain:

8. Has any owner, partner, or (for corporations) officer of the Architect operated a design or construction company under any other name in the last five (5) years?

Yes No

If "yes," explain:

1.E INFORMATION ABOUT CORE SUB-CONSULTANTS

For each required Core Sub-Consultant, provide the following information:

Entity Name: _____
 Contact: Person: _____
 Address: _____
 Phone: _____ Email _____

Type of Entity (check one):

- Corporation Partnership Sole Prop. Other Association

- 1a. Date of entity incorporation, formation or commencement: _____
 b. State of formation or incorporation: _____
 c. How many people does your organization currently employ: _____
 d. If the entity is a **corporation**, please complete the following table; provide information for each officer of the corporation or individual(s) with 10% or more of the corporate stock:

Position	Name	Years with Co.	% Ownership
President			
Vice-President			
Secretary			
Treasurer			

- e. If the entity is a **partnership**, please complete the following table; provide information for each partner who owns 10% or more of the firm:

Position	Name	Years with Co.	% Ownership
General Partner			

- f. If the entity is a **sole proprietorship**, please provide the name and social security number of the company owner:

Name	Social Security No. (last 4 digits)

- g. If the entity is a **joint venture**, please complete the following table; provide information for each member of the joint venture:

Name of Firm	Name of Owner, General Partner, or President	% Ownership of Joint Venture

- h. For each person listed in table 1d, 1e, 1f, or 1g, identify every construction company that the person has been associated with (as owner, general partner, limited partner, or officer) at any time during the last five (5) years:

NOTE: For this question, “owner” and “partner” refer to ownership of 10% or more of the business, or 10% or more of its stock, if the business is a corporation.

Name	Company	Position with Company	Dates of Employ.

2. Has there been any change in ownership of the Sub-Consultant at any time during the last three (3) years?

NOTE: A corporation whose shares are publicly traded must only report a change in ownership of a controlling block of shares.

Yes No

If “yes,” explain:

3. Is the Sub-Consultant a subsidiary, parent, holding company or affiliate of another design or construction firm?

NOTE: Include information about other firms if one firm owns 50% or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm.

Yes No

If “yes,” explain:

4. Are any of the Sub-Consultant’s corporate officers, partners or owners associated with any other design or construction companies?

NOTE: Include name, address, and position information about each other firm in which an owner, partner, or officer of your firm holds a similar position.

Yes No

If “yes,” explain:

5. State the Sub-Consultant’s gross revenues for each of the last six years:

2019: _____ **2020:** _____ **2021:** _____
2022: _____ **2023:** _____ **2024:** _____

6. Based on the financial statement required in Part II.C, provide the following information about the Sub-Consultant:

Current Assets: \$ _____
Current Liabilities: \$ _____
Total Net Worth: \$ _____
Current Asset/Liability Ratio: \$ _____
Working Capital
(Current Assets – Current Liabilities) \$ _____

7. Has the Sub-Consultant changed its name or license number in the past five (5) years?

Yes No

If “yes,” explain:

8. Has any owner, partner, or (for corporations) officer of the Sub-Consultant operated a design or construction company under any other name in the last five (5) years?

Yes No

If “yes,” explain:

9. Provide the following information for the Sub-Consultant’s principal engineer:

Note: For the Structural Engineering Sub-Consultant, list information for the Engineer of Record (i.e., the engineer whose stamp will appear on the Project documents).

Name	CA License Number	Years Licensed

1.F INFORMATION ABOUT CORE SUB-CONTRACTORS

For each required Core Sub-Contractor, provide the following information:

Entity Name: _____
 Contact: Person: _____
 Address: _____
 Phone: _____ Email _____

Type of Entity (check one):

- Corporation Partnership Sole Prop. Other Association

- 1a. Date of entity incorporation, formation or commencement: _____
 b. State of formation or incorporation: _____
 c. How many people does your organization currently employ: _____
 d. If the entity is a **corporation**, please complete the following table; provide information for each officer of the corporation or individual(s) with 10% or more of the corporate stock:

Position	Name	Years with Co.	% Ownership
President			
Vice-President			
Secretary			
Treasurer			

- e. If the entity is a **partnership**, please complete the following table; provide information for each partner who owns 10% or more of the firm:

Position	Name	Years with Co.	% Ownership
General Partner			

2. Has there been any change in ownership of the Sub-Contractor at any time during the last three (3) years?

NOTE: A corporation whose shares are publicly traded must only report a change in ownership of a controlling block of shares.

Yes No

If “yes,” explain:

3. Is the Sub-Contractor a subsidiary, parent, holding company or affiliate of another design or construction firm?

NOTE: Include information about other firms if one firm owns 50% or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm.

Yes No

If “yes,” explain:

4. Are any of the Sub-Contractor’s corporate officers, partners or owners associated with any other design or construction companies?

NOTE: Include name, address, and position information about each other firm in which an owner, partner, or officer of your firm holds a similar position.

Yes No

If “yes,” explain:

5. State the Sub-Contractor’s gross revenues for each of the last six years:

2019: _____ 2020: _____ 2021: _____
 2022: _____ 2023: _____ 2024: _____

6. Based on the financial statement required in Part II.B, provide the following information about the Sub-Contractor:

Current Assets: \$ _____
Current Liabilities: \$ _____
Total Net Worth: \$ _____
Current Asset/Liability Ratio: \$ _____
Working Capital
 (Current Assets – Current Liabilities) \$ _____

7. List all California construction license numbers, classifications and expiration dates of the California contractor licenses held by the Sub-Contractor:

Yes No

Contractor License Number	Classification(s)	Expiration Date

8. If any of the Sub-Contractor’s license(s) are held in the name of a corporation, partnership, or other entity, list below the names of the qualifying individuals(s) listed on the CSLB records who meet(s) the experience and examination requirements for each license.

Contractor License Number	Name of Qualifying Individual

9. Has the Sub-Contractor changed its name or license number in the past five (5) years?

Yes No

If “yes,” explain:

10. Has any owner, partner, or (for corporations) officer of the Sub-Contractor operated a design or construction company under any other name in the last five (5) years?

Yes No

If “yes,” explain:

PART II: ESSENTIAL REQUIREMENTS FOR THE DESIGN-BUILD ENTITY AS A WHOLE

II.A ESSENTIAL REQUIREMENTS FOR THE DESIGN BUILD ENTITY AS A WHOLE

NOTE: *Design Build Entity will be automatically disqualified if the answer to questions 1 or 2 is “No.”*

1. If the Design Build Entity is a joint-venture or partnership, has the Design Build Entity attached a copy of the agreement creating the entity and which specifies that all partners or association members agree to be fully liable for the performance under the design-build contract?

NOTE: A corporation or sole proprietorship is not required to answer this question.

Yes No

2. Has the Design Build Entity attached a copy of its most **current** reviewed or audited financial statement with accompanying notes and supplemental information, as well as reviewed or audited financial statements with accompanying notes and supplemental information for the **past year** (if available)? At least **one** such statement for the Design Build entity must be attached.

Yes No

A financial statement that is not either reviewed or audited is not acceptable. A letter verifying availability of a line of credit is not a substitute for the required financial statement.

NOTE: Design Build Entity will be automatically disqualified if the answer to any of questions 3 through 9 is “Yes.”

3. Has the Design Build Entity ever defaulted on a construction contract?

Yes No

4. Within the last five (5) years, has a surety firm completed a contract on behalf of the Design Build Entity or any of its members, or paid for completion because the Design Build Entity or one of its members was default terminated by the project owner?

Yes No

5. At the time of submitting this Prequalification Questionnaire, is the Design Build Entity or any of its members ineligible to bid on or be awarded a public works contract, or perform as a sub-contractor on a public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7?

Yes No

6. At any time during the last five (5) years, has the Design Build Entity or any of its members been convicted of a crime involving the awarding of a contract of a government construction project, or the bidding or performance of a government contract?
- Yes No
7. Has the Design Build Entity or any of its members, any of their owners or officers ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?
- Yes No
8. Has the Design Build Entity or any of its members, any of their owners or officers ever been convicted of a crime involving any federal, state, or local law related to construction?
- Yes No
9. Has the Design Build Entity or any of its members, any of their owners or officers ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?
- Yes No

II.B ESSENTIAL REQUIREMENTS FOR THE GENERAL CONTRACTOR AND CORE-SUBCONTRACTORS

NOTE: Design Build Entity will be automatically disqualified if the answer to any of questions 10 through 14 is “No.”

10. Do the General Contractor and each proposed Sub-Contractor possess a valid, current California contractor’s license for the Project services for which it intends to submit a proposal?

For this Project, the General Contractor must have a current and active California State Contractor’s license with a “B” General Building Contractor classification.

Yes No

11. Does the General Contractor have a liability insurance policy with a policy limit of at least \$3,000,000 per occurrence and \$6,000,000 aggregate?

Yes No

12. Do the General Contractor and each proposed Sub-Contractor have current workers’ compensation insurance policies as required by the Labor Code or legal self-insurance pursuant to Labor Code section 3700 et seq.?

Yes No

13. Has the General Contractor attached a copy of its most **current** reviewed or audited financial statement with accompanying notes and supplemental information, as well as reviewed or audited financial statements with accompanying notes and supplemental information for the **past year**? The County reserves the right to request sub-contractor reviewed or audited financial statements at a later date.

Yes No

A financial statement that is not either reviewed or audited is not acceptable. A letter verifying availability of a line of credit is not a substitute for the required financial statement.

14. Has the General Contractor attached a notarized statement from a surety insurer admitted and authorized to issue bonds in the State of California (i.e., approved by the California Department of Insurance), which states that the General Contractor’s current payment and performance bonding capacity is sufficient for the Project?

NOTE: Required minimum performance and payment bonding capacity for the Project is equal to the estimated Project construction cost.

Yes No

Notarized statement must be from the surety company, not an agent or broker.

NOTE: Design Build Entity will be automatically disqualified if the answer to any of questions 15 through 21 is “Yes.”

15. At any time during the last five (5) years, has any Contractor State Licensing Board license of the General Contractor or any of the proposed Sub-Contractors (or the responsible managing officer/employee thereof) been revoked or suspended?
- Yes No
16. Within the last five (5) years, has a surety firm completed a contract on behalf of the General Contractor or any of the proposed Sub-Contractors, or paid for completion because the Contractor or Sub-Contractor was default terminated by the project owner?
- Yes No
17. At the time of submitting this Prequalification Questionnaire, is the General Contractor or any of the proposed Sub-contractors ineligible to bid on or be awarded a public works contract, or perform as a sub-contractor on a public works contract, pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7?
- Yes No
18. At any time during the last five (5) years, has the General Contractor, any of its owners or officers, or any of the proposed Sub-Contractors, or their owners or officers, been convicted of a crime involving the awarding of a contract of a government construction project, or the bidding or performance of a government contract?
- Yes No
19. Has the General Contractor, any of its owners or officers, or any of the proposed Sub-Contractors, or their owners or officers, ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?
- Yes No
20. Has the General Contractor, any of its owners or officers, or any of the proposed Sub-Contractors, or their owners or officers, ever been convicted of a crime involving any federal, state, or local law related to construction?
- Yes No

21. Has the General Contractor, any of its owners or officers, or any of the proposed Sub-Contractors, or their owners or officers, ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

Yes No

II.C ESSENTIAL REQUIREMENTS FOR THE ARCHITECT AND CORE SUB-CONSULTANTS

NOTE: Design Build Entity will be automatically disqualified if the answer to any of questions 22 through 25 is “No.”

22. Do all architects and Sub-Consultant designers possess valid and current professional licenses for the services for which they intend to provide on the Project?
 Yes No
23. Does the Architect have, or can the Architect obtain, a professional liability insurance policy with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 aggregate?
 Yes No
24. Do the Architect and each proposed Sub-Consultant have current workers’ compensation insurance policy as required by the Labor Code or is legally self-insured pursuant to Labor Code section 3700 et seq.?
 Yes No
25. Has the Architect attached a copy of its most current compiled, reviewed, or audited financial statement with accompanying notes and supplemental information, as well as reviewed or audited financial statements with accompanying notes and supplemental information for the past year?
 Yes No

A financial statement that is not either compiled, reviewed, or audited is not acceptable. A letter verifying availability of a line of credit is not a substitute for the required financial statement.

NOTE: Design Build Entity will be automatically disqualified if the answer to any of questions 26 through 30 is “Yes.”

26. Has any professional license, credential, or registration of any Design Build Entity architect or sub-consultant designer been revoked or suspended at any time in the last five (5) years?
 Yes No
27. At any time during the last five (5) years, has the Architect, a Sub-Consultant, or any owner or officer of either been convicted of a crime involving the awarding of a contract of a government construction project, or performance of a government contract?
 Yes No

28. Has the Architect, a Sub-Consultant, or any of its owners, officers, or partners ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?
- Yes No
29. Has the Architect, a Sub-Consultant, or any of its owners, officers, or partners ever been convicted of a crime involving any federal, state, or local law related to construction?
- Yes No
30. Has the Architect, a Sub-Consultant, or any of its owners, officers, or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?
- Yes No

PART III: SCORED QUESTIONS FOR MEMBERS OF THE DESIGN BUILD ENTITY AND CORE ORGANIZATIONS

III.A SCORED QUESTIONS FOR THE GENERAL CONTRACTOR

The term “associates” shall mean all of the following:

- The current qualifiers for all current Contractors State License Board contracting licenses held by the contractor.
- All current officers of a contractor which is a corporation.
- All current partners of a contractor which is a partnership.
- All current joint ventures of the joint venture contractor which is seeking prequalification.

Experience & Organizational Performance

1. How many years has the General Contractor been in business in California as a General Contractor under its present business name and license number?

NOTE: If the General Contractor is a joint-venture, enter the average of the qualifying years for each partner to the joint-venture.

Years: _____

2. How many new construction projects for a city, county or state similar to this facility has the General Contractor or its associates completed in the last ten (10) years?

No. of new construction projects for a similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

3. How many renovation construction projects for a city, county or state for a similar facility has the General Contractor or its associates completed in the last ten (10) years?

No. of renovation projects completed for a detention facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

4. How many projects for a city, county or state similar facility has the General Contractor or its associates completed in the last ten (10) years that involved the replacement of infrastructure systems (i.e., roads, water tanks, water mains, etc.)?

No. of projects for a county or state facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

5. How many projects for a county or state similar facility has the General Contractor or its associates completed in the last ten (10) years that involved the replacement of electronic systems (i.e., building management systems, fire alarm systems, etc.)?

No. of projects for a county or state similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

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6. How many projects for a county or state similar facility has the General Contractor or its associates completed in the last ten (10) years that involved the replacement of detention control system?

No. of projects for a county or state similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

7. How many projects for a county or state similar facility has the General Contractor or its associates completed in the last ten (10) years that involved the renovation of housing units?

No. of projects for a county or state similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

8. Does the General Contractor currently employ LEED (Leadership in Energy & Environmental Design) Accredited Professionals?

Yes No

9. Has the General Contractor constructed a facility where a California County was the authority having jurisdiction?

Yes No

If yes, identify the specific projects the General Contractor has completed where the California County was the authority having jurisdiction (AHJ):

Project	Location (city, state)	Certification Level	Date Certified

10. Are the General Contractor or its associates currently the debtor in a bankruptcy case?

Yes No

If “yes,” indicate the case number, and the date on which the petition was filed.

Case #: _____ **Date filed:** _____

11. Were the General Contractor or its associates in bankruptcy at any time during the last five years? (This question refers only to a bankruptcy action that was not described in answer to question 3, above)

Yes No

If “yes,” indicate the case number and the date on which the petition was filed, and the Bankruptcy Court’s discharge order number.

Case #: _____ **Date filed:** _____ **Discharge #:** _____

Licensing

12. In the past five years, have the General Contractor or its associates been cited for violations of the Contractor’s State License Law (Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code), *excluding* alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding?

NOTE: If the General Contractor or its associates have filed an appeal of a citation that has not yet been ruled on, it need not include information about that claim.

Yes No

If "yes," describe the nature of each violation, identify the name of the project, the date of its completion, the owner for which it was constructed, and give a brief explanation.

Violation:		Project:	
Completion:		Owner:	
Explanation:			

Violation:		Project:	
Completion:		Owner:	
Explanation:			

Violation:		Project:	
Completion:		Owner:	
Explanation:			

Claims & Disputes

13. At any time in the last five years has the General Contractor or its associates been assessed and paid liquidated damages of more than \$50,000 after completion of a project under a construction contract with either a public or private owner?

Yes No

If yes, identify all such projects by owner, owner's address, completion date of the project, amount of liquidated damages assessed and all other information necessary to fully explain the assessment of liquidated damages:

Owner:		Address:	
Completed:		Amount:	
Other:			

14. Have the General Contractor or its associates, or any firm with which any of the General Contractor’s owners, officers or partners was associated, ever defaulted on a construction contract?

NOTE: “Associated with” refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to question 3 or 4 of Part I.C of this form.

Yes No

If “yes,” identify the company, the person within the General Contractor who was associated with that company, the year of the event, the owner of the project, the project and the basis for the default:

Company:		Person:	
Year		Owner:	
Basis:			

Company:		Person:	
Year:		Owner:	
Basis:			

Company:		Person:	
Year:		Owner	Project
Basis:			

15. In the last five years, have the General Contractor or its associates, or any firm with which any of the General Contractor’s owners, officers or partners was associated, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any government agency or public works project for any reason?

NOTE: “Associated with” refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to question 3 or 4 of Part I.B of this form.

Yes No

If “yes,” identify the company, the person within the General Contractor who was associated with that company, the year of the event, the owner of the project, the project and the basis for the action:

Company:		Person:	
Year:		Owner:	Project:
Basis:			

Company:		Person:	
Year:		Owner:	Project
Basis:			

Company:		Person:	
Year:		Owner	Project
Basis:			

16. Have the General Contractor or its associates, or any firm with which any of the General Contractor’s owners, officers or partners was associated ever been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder?

NOTE: “Associated with” refers to another construction firm in which an owner, partner or officer of your firm held a similar position, and which is listed in response to question 3 or 4 of Part I.B of this form.

Yes No

If “yes,” identify the year of the event, the owner, the project and the basis for the finding by the public agency.

Year:		Owner:		Project:	
Basis:					

Year:		Owner:		Project:	
Basis:					

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Year:		Owner:		Project:	
Basis:					

NOTE: The following two questions refer only to disputes between the General Contractor or its associates and the owner of a project. You need not include information about disputes between the General Contractor and a supplier, another contractor, or sub-contractor. You need not include information about “pass-through” disputes in which the actual dispute is between a sub-contractor and a project owner.

17. In the past five years has any claim in excess of \$50,000 been made against the General Contractor or its associates arising from or related to a design or construction contract (including claims for violation of the Federal or California False Claims Act) that was not resolved by change order or contract amendment?

Yes No

If “yes,” identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court in which the case was filed (if applicable) and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

Project:		Date:	
Claimant:		Court:	
Nature:			

Description:

Project:		Date:	
Claimant:		Court:	

Nature:

Description:

Project:		Date:	
Claimant:		Court:	

Nature:

Description:

18. In the past five years have the General Contractor or its associates made any claim in excess of \$50,000 against a project owner arising from or related to a design or construction contract that was not resolved by change order or contract amendment?

Yes No

If “yes,” identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

Project:		Date:	
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Entity:		Defendant:	
Description:			

Project:		Date:	
Entity:		Defendant:	
Description:			

Project:		Date:	
Entity:		Defendant:	
Description:			

19. During the last five (5) years, have General Contractor or its associates been denied payment or performance bond coverage by a surety company, or has there ever been a period of time when General Contractor or its associates had no surety bond in place during a public construction project when one was required?

Yes No

If yes, indicate the date when General Contractor or its associates were denied coverage and the name of the company or companies that denied coverage; and the period during which you had no surety bond in place.

Date:		Surety:		Duration Period:	
Explanation:					

Date:		Surety:		Duration Period:	
Explanation:					

Date:		Surety:		Duration Period:	
Explanation:					

Date:		Surety:		Duration Period:	
Explanation:					

Regulatory Compliance

20. Has CAL OSHA cited and assessed penalties against the General Contractor or its associates for any “serious,” “willful” or “repeat” violations of its safety or health regulations in the past five (5) years?

NOTE: If the General Contractor or its associates have filed an appeal of a citation that has not yet been ruled on, it need not include information about that claim.

Yes No

If “yes,” describe the citations, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision:

Description:		Date:		Nature:	
Project:		Amount:			

Description:		Date:		Nature:	
Project:		Amount:			

Description:		Date:		Nature:	
Project:		Amount:			

21. In the past five years, has the federal Occupational Safety and Health Administration cited and assessed penalties against the General Contractor or its associates?

NOTE: If the General Contractor or its associates have filed an appeal of a citation that has not yet been ruled on, it need not include information about that claim.

Yes No

If “yes,” describe each citation.

Explanation:

Prevailing Wage & Apprenticeship

22. Has there been more than one occasion during the last five (5) years in which the General Contractor or its associates were required to pay either back wages or penalties for the General Contractor’s failure to comply with California’s prevailing wage laws?

This question refers only to a violation of prevailing wage laws by the General Contractor or its associates, not to violations of the prevailing wage laws by a sub-contractor.

Yes No

If “yes,” describe the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

Violation:		Project:			
Completion:		Agency:			
Employees:				Amount:	

Violation:		Project:			
Completion:		Agency:			

Employees:		Amount:	
Violation:		Project:	
Completion:		Agency:	
Employees:		Amount:	

Safety & Quality Control

23. Do the General Contractor and its associates require documented safety meetings to be held for construction employees and field supervisors during the course of a project?

Yes No

If “yes,” identify how often the meetings are required.

Weekly **Bi-Weekly** **Monthly** **Less Frequent**

24. Do General Contractor and its associates have a written Injury and Illness Prevention Program (IIPP) that complies with California Code of Regulations, Title 8 Sections 1509 and 3203?

Yes No

25. Do General Contractor and its associates have personnel permanently assigned to safety?

Yes No

26. Do General Contractor and its associates have a written Quality Assurance/Quality Control (“QA/QC”) program?

Yes No

III.B SCORED QUESTIONS FOR THE ARCHITECT MEMBER

“Architect of Record” shall mean the architect whose stamp will appear on Project documents.

“Architect” shall mean the firm with employs the Architect of Record whether it is the General Contractor, a separate architectural firm, or other firm.

Experience & Organizational Performance

1. How many years has the Architect been in business in California as an architect under its present business name and license number?

NOTE: If the Architect is a joint-venture, enter the average of the qualifying years for each partner to the joint-venture.

Years: _____

2. How many new construction projects for a county or state similar facility has the Architect or its associates completed in the last ten (10) years?

No. of new construction projects for a county or state similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

3. How many renovation construction projects for a county or state similar facility has the Architect or its associates completed in the last ten (10) years?

No. of renovation projects completed for a county or state similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

4. How many projects for a county or state similar facility has the Architect or its associates completed in the last ten (10) years that involved the infrastructure projects (i.e, roads, water tanks, water mains, etc.)?

No. of projects for a county or state similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

5. How many projects for a county or state similar facility has the Architect or its associates completed in the last ten (10) years that involved the replacement of electronic systems (i.e, building management systems, fire alarm systems, etc.)?

No. of projects for a county or state similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

6. How many projects for a county or state detention facility has the Architect or its associates completed in the last ten (10) years that involved the replacement of similar control systems?

No. of projects for a county or state similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

7. How many projects for a county or state similar facility has the Architect or its associates completed in the last ten (10) years that involved housing unit renovations?

No. projects for a county or state similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

8. Does the Architect currently employ LEED (Leadership in Energy & Environmental Design) Accredited Professionals?

Yes No

9. Has the Architect constructed a facility where the County was the authority having jurisdiction?

Yes No

If yes, identify the specific projects the Architect has completed where the County was the authority having jurisdiction (AHJ):

Project	Location (city, state)	Certification Level	Date Completed

10. Is the Architect currently the debtor in a bankruptcy case?

Yes No

If “yes,” indicate the case number, and the date on which the petition was filed.

Case number: _____ **Date filed:** _____

11. Was any part of the Architect in bankruptcy at any time during the last five (5) years? (This question refers only to a bankruptcy action that was not described in answer to question 6, above)

Yes No

If “yes,” indicate the case number and the date on which the petition was filed, and the Bankruptcy Court’s discharge order number.

Case number: _____ **Date filed:** _____ **Discharge #:** _____

Claims & Disputes

12. In the past ten (10) years has the Architect operated without professional liability insurance?

Yes No

If “yes,” explain on a separate sheet.

13. In the past five (5) years has any claim in excess of \$50,000 been made against the Architect arising from or related to a design or construction contract (including claims for violation of the Federal or California False Claims Act) that was not resolved by change order or contract amendment?

Yes No

If “yes,” identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

Project Name:		Date:	
Claimant:		Court:	
Nature:			
Description:			

14. In the past five (5) years has the Architect made any claim in excess of \$50,000 against a project owner arising from or related to a design or construction contract that was not resolved by change order or contract amendment?

Yes No

If “yes,” identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

Project Name:		Date:	
Entity(s):		Court:	
Nature:			
Description:			

III.C SCORED QUESTIONS FOR THE SUB-CONSULTANT MEMBERS

For each required Core Sub-Consultants, answer the following questions:

Experience & Organizational Performance

- How many years has the Sub-Consultant been in business in California under its present business name and license number?

Number of Years: _____

- How many new construction projects for a county or state similar facility has the Sub-Consultant or its associates completed in the last ten (10) years?

No. of new construction projects for a county or state similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

- How many renovation construction projects for a county or state similar facility has the Sub-Consultant or its associates completed in the last ten (10) years?

No. of renovation projects completed for a county or state similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

4. How many projects for a county or state similar facility has the Sub-Consultant or its associates completed in the last ten (10) years that involved infrastructure projects (i.e. roads, water tanks, water mains, building management system, fire alarm system, detention control systems, etc.)?

No. of projects for a county or state similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

5. Is the Sub-Consultant currently a debtor in a bankruptcy case?

Yes No

6. Was any part of the Sub-Consultant in bankruptcy at any time during the last five (5) years?

Case #: _____ **Date Filed:** _____ **Discharge** _____

Claims & Disputes

7. In the past ten (10) years has the Sub-Consultant operated without professional liability insurance?

Yes No

If “yes,” explain on a separate sheet.

8. In the past five (5) years has any claim in excess of \$50,000 been made against the Sub-Consultant arising from or related to a design or construction contract (including claims for violation of the Federal or California False Claims Act) that was not resolved by change order or contract amendment?

Yes No

If “yes,” identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

Project:		Date:	
Entity:		Defendant:	
Description:			

Project:		Date:	
Entity:		Defendant:	
Description:			

Project:		Date:	
Entity:		Defendant:	
Description:			

9. In the past five (5) years has the Sub-Consultant made any claim in excess of \$50,000 against a project owner arising from or related to a design or construction contract that was not resolved by change order or contract amendment?

Yes No

If “yes,” identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

Project:		Date:	
Claimant:		Court:	
Nature:			
Description:			

Project:		Date:	
Claimant:		Court:	
Nature:			
Description:			

III.D SCORED QUESTIONS FOR THE SUB-CONTRACTORS

(This section shall be completed and provided for each ‘listed” GC Teaming Sub-contractor)

For each required Core Sub-Contractor, answer the following questions:

1. How many years has the Sub-Contractor been in business in California under its present business name and license number?

Number of Years: _____

2. How many new construction projects for a county or state similar facility has the Sub-Contractor or its associates completed in the last ten (10) years?

No. of new construction projects for a county or state similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

3. How many renovation construction projects for a county or state similar facility has the Sub-Contractor or its associates completed in the last ten (10) years?

No. of renovation projects completed for a county or state similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

4. How many projects for a county or state similar facility has the Sub-Contract or its associates completed in the last ten (10) years that involved infrastructure projects (i.e, roads, water tanks, water mains, building management systems, fire alarm systems, detention control systems, etc.)?

No. of projects for a county or state similar facility: _____

List the following information for the (up to five) most recent of these projects:

Project Name / Building Type	Location	Construction Cost

5. Is the Sub-Contractor currently a debtor in a bankruptcy case?

Yes No

If “yes” indicate the case number, and the date on which the petition was filed.

Case #: _____ **Date filed:** _____

6. Was any part of the Sub-Contractor in bankruptcy at any time during the last five (5) years?

Yes No

Case #: _____ **Date Filed:** _____ **Discharge #** _____

7. Has the Sub-Contractor paid liquidated damages of more than \$50,000 in the last five (5) years?

Yes No

If “yes”, identify all such projects by owner, owner’s address, completion date of the project, amount of liquidated damages assessed and all other information necessary to fully explain the assessment of liquidated damages.

Owner:		Address:	
Completed:		Amount:	
Other:			

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8. In the last five (5) years, has the Sub-Contractor been disbarred, disqualified, removed, or otherwise prevented from bidding on, or completing any government agency or public works project for any reason?

Yes No

If “yes,” identify the company, the person within the Sub-Contractor who was associated with that company, the year of the event, the owner of the project, the project and the basis for the action.

Company:		Person:	
Year:		Owner:	
Basis:			

9. In the past five (5) years, has any claim in excess of \$50,000 been made against the Sub-Contractor arising from or related to a design or construction contract (including claims for violation of the Federal or California False Claims Act) that was not resolved by change order or contract amendment?

Yes No

If “yes,” identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

Project:		Date:	
Entity:		Defendant:	
Description:			

Project:		Date:	
Entity:		Defendant:	
Description:			

Project:		Date:	
Entity:		Defendant:	
Description:			

10. In the past five years has the Sub-Contractor made any claim in excess of \$50,000 against a project owner arising from or related to a design or construction contract that was not resolved by change order or contract amendment?

Yes No

If “yes,” identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, the court in which the case was filed and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

Project:		Date:	
Claimant:		Court:	
Nature:			

Description:

Project:		Date:	
Claimant:		Court:	
Nature:			
Description:			

Project:		Date:	
Claimant:		Court:	
Nature:			
Description:			

11. In the last five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for the Sub-Contractor?

Yes No

If "yes," give name the insurance carrier, the form of insurance and the year of the refusal.

Year:		Carrier:		Form:	
--------------	--	-----------------	--	--------------	--

Comments:

Year:		Carrier:		Form:	
Comments:					

Year:		Carrier:		Form:	
Comments:					

Regulatory Compliance

12. Has Cal OSHA or federal OSHA cited an assessed penalties against the Sub-Contractor of any “serious”, “willful”, or “repeat” violations of its safety or health regulations in the last five (5) years?

NOTE: If the Sub-Contractor has filed an appeal of a citation that has not yet been ruled on, it need not include information about that claim.

Yes No

If “yes,” describe the citations, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision.

Description:		Date:		Nature:	
---------------------	--	--------------	--	----------------	--

Project:		Amount:	
Description:		Date:	Nature:
Project:		Amount:	
Description:		Date:	Nature:
Project:		Amount:	

Prevailing Wage & Apprenticeship

13. During the last five (5) years, have there been instances in which the Sub-Contractor was penalized or required to pay either back wages or penalties Sub-Contractor’s failure to comply with California’s prevailing wage laws?

This question refers only to the violation of prevailing wage laws, not to violations of the prevailing wage laws by a sub-contractor.

Yes No

If "yes," describe the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

Violation:		Project:	
Completion:	Agency:		
Employees:		Amount:	

Violation:		Project:	
Completion:	Agency:		
Employees:		Amount:	

Violation:		Project:	
Completion:	Agency:		
Employees:		Amount:	

Violation:		Project:	
Completion:	Agency:		
Employees:		Amount:	

Violation:		Project:	
-------------------	--	-----------------	--

Completion:		Agency:	
Employees:		Amount:	

14. During the last five (5) years, have there been occasions in which the Sub-Contractor was penalized or required to pay back wages for failure to comply with the **Federal** Davis-Bacon prevailing wage requirements?

Yes No

If “yes,” describe the nature of the violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid, the amount of back wages you were required to pay along with the amount of any penalty paid.

Violation:		Project:	
Completion:		Agency:	
Employees:		Amount:	

Violation:		Project:	
Completion:		Agency:	
Employees:		Amount:	

Violation:		Project:	
Completion:		Agency:	
Employees:		Amount:	

PART IV: RECENT CONSTRUCTION PROJECTS COMPLETED
IV.A DESIGN BUILD ENTITY AND GENERAL CONTRACTOR EXPERIENCE

The Design Build Entity shall submit at least two (2) and no more than five (5) projects completed in the past ten (10) years by the Design Build Entity or its General Contractor that demonstrate that the Design Build Entity and its General contractor have the experience, competency, capability, and capacity to design and complete, projects of **similar size, scope, or complexity to the Project**; a single project may fulfill more than one required experience criterion.

Only information, experience and work performed by the Design Build Entity's or General Contractor's office that will bid, manage, design, construct, and staff the Project will be considered for prequalification unless otherwise indicated below.

Projects presented for consideration must be submitted on the 2-page form provided in this section. Make additional copies as needed.

The below listed criteria are PASS/FAIL. Failure to submit completed projects that meet the criteria below will result in a failure to prequalify for this Project:

DESIGN BUILD EXPERIENCE:

- At least two (2) projects which were each a minimum of \$18,000,000 in construction cost completed using a Design-Build project delivery method.

CONSTRUCTION RENOVATION EXPERIENCE IN A SIMILAR FACILITY:

- At least two (2) new construction projects that is at least seventy-five percent (75%) complete as of the date of RFQ proposal submission.

CALIFORNIA COUNTY EXPERIENCE:

- At least one (1) completed project of at least \$18,000,000 in construction cost where a California County was the authority having jurisdiction (AHJ) on the project.

COMPARABLE/RELEVANT EXPERIENCE:

- At least two (2) completed projects which were built in the State of California.

IV.C GENERAL CONTRACTOR REFERENCES

Please provide contact information for your references. The County will contact the individuals you list and ask the questions attached herein.

**DESIGN BUILD ENTITY – GENERAL CONTRACTOR
COMPARABLY SIZED PROJECT # _____**

VERIFY ALL CONTACTS PRIOR TO SUBMITTAL.

*Do not leave any spaces blank. Responses such as "N/A" are not acceptable.
If not applicable, state "Not Applicable" and explain why. If none, state "NONE."*

Reference Information:

Project Name: _____

Project or Contract Number: _____

Project Location: _____ , _____ , _____
Street Address City & State Zip Code

Owner Information: _____ Contact Person: _____
Owner's Name Name & Title

Address: _____ , _____ , _____
Street Address City & State Zip Code

Telephone: _____ Facsimile: _____ Email: _____

Address of **Design Build Entity or General Contractor's** Office that Performed the Work:
_____ , _____ , _____
Street Address City & State Zip Code

Name of **Design Build Entity or General Contractor's**
Project Manager for project: _____
Name of **Design Build Entity or General Contractor's**
Superintendent for project: _____

Contractor: _____

Contact Person: _____

Address: _____ , _____ , _____
Street Address City & State Zip Code

Telephone: _____ Facsimile: _____ Email: _____

Design Firm: _____ Contact Person: _____
Name & Title

Address: _____ , _____ , _____
Street Address City & State Zip Code

Telephone: _____ Facsimile: _____ Email: _____
Name of Design Firm's Project Manager for project: _____

Contract Time:

Start Date: _____ Scheduled Completion Date: _____
Month/Day/Year Month/Day/Year

Actual Completion Date: _____ Days Extended due to Unexcused Delays: _____
Month/Day/Year

Contract Amount:

\$ _____ \$ _____ \$ _____
Base Amount Adjustment Due to Change Orders Final Contract Amount

Project Information:

Was the project a Design Build project with \$18,000,000 or more construction cost? Yes No

Type of Project: Renovation Wellness Center Other _____

Type of Owner: Public Private

Was the project built in California? Yes No

Was the County the authority having jurisdiction? Yes No

Project Description: *(Provide a brief description including project photo)*

IV.B ARCHITECT EXPERIENCE

The Architect shall submit at least two (2) and no more than five (5) projects completed in the past ten (10) years that demonstrate that the Architect has the experience, competency, capability, and capacity to design and complete, projects of **similar size, scope, or complexity to the Project**; a single project may fulfill more than one required experience criterion.

Only information, experience and work performed by the Architect's office that will bid, manage, design, construct, and staff the Project will be considered for prequalification.

Projects presented for consideration must be submitted on the 2-page form provided in this section. Make additional copies as needed.

The below listed criteria are PASS/FAIL. Failure to submit completed projects that meet the criteria below will result in a failure to prequalify for this project:

DESIGN BUILD EXPERIENCE:

- At least two (2) projects which were each a minimum of \$18,000,000 in construction cost completed using a Design Build project delivery method.

CONSTRUCTION RENOVATION EXPERIENCE IN A SIMILAR FACILITY:

- At least two (2) new construction projects that is at least seventy-five percent (75%) complete as of the date of RFQ proposal submission.

CALIFORNIA COUNTY EXPERIENCE:

- At least one (1) completed project of at least \$18,000,000 in construction cost where a California County was the authority having jurisdiction (AHJ) on the project.

COMPARABLE/RELEVANT EXPERIENCE:

- At least two (2) completed projects which were built in the State of California.

IV.C ARCHITECT REFERENCES

Please provide contact information for your references. The County will contact the individuals you list and ask the questions attached herein.

ARCHITECT COMPARABLY SIZED PROJECT # _____

VERIFY ALL CONTACTS PRIOR TO SUBMITTAL.

*Do not leave any spaces blank. Responses such as "N/A" are not acceptable.
If not applicable, state "Not Applicable" and explain why. If none, state "NONE."*

Reference Information:

Project Name: _____

Project or Contract Number: _____

Project Location: _____ , _____ , _____
Street Address City & State Zip Code

Owner Information: _____ Contact Person: _____
Owner's Name Name & Title

Address: _____ , _____ , _____
Street Address City & State Zip Code

Telephone: _____ Facsimile: _____ Email: _____

Address of **Architect's** Office that Performed the Work:
 _____ , _____ , _____
Street Address City & State Zip Code

Name of **Architect's** Project Manager for project: _____

Contractor: _____

Contact Person: _____

Address: _____ , _____ , _____
Street Address City & State Zip Code

Telephone: _____ Facsimile: _____ Email: _____

Design Firm: _____ Contact Person: _____
Name & Title

Address: _____ , _____ , _____
Street Address City & State Zip Code

Telephone: _____ Facsimile: _____ Email: _____

Name of Design Firm's Project Manager for project: _____

Contract Time:		
Start Date: _____	Scheduled Completion Date: _____	
Month/Day/Year	Month/Day/Year	
Actual Completion Date: _____	Days Extended due to Unexcused Delays: _____	
Month/Day/Year		
Contract Amount:		
\$ _____	\$ _____	\$ _____
Base Amount	Adjustment Due to Change Orders	Final Contract Amount
Project Information:		
Was the project a Design Build project with \$18,000,000 or more construction cost? Yes <input type="checkbox"/> No <input type="checkbox"/>		
Type of Project:	Renovation <input type="checkbox"/>	Wellness Center <input type="checkbox"/> Other <input type="checkbox"/> _____
Type of Owner:	Public <input type="checkbox"/>	Private <input type="checkbox"/>
Was the project a concrete tilt-up structure? Yes <input type="checkbox"/> No <input type="checkbox"/>		
Was the project built in California? Yes <input type="checkbox"/> No <input type="checkbox"/>		
Was the County the authority having jurisdiction? Yes <input type="checkbox"/> No <input type="checkbox"/>		
Project Description: <i>(Provide a brief description including project photo)</i>		

PART VI: CERTIFICATION

I, the undersigned, certify and declare that I am authorized to make this certification on behalf of the Design Build Entity, _____. I have read the contents of this completed Prequalification Questionnaire and the submittal in response to the Request for Prequalification, and I am thoroughly knowledgeable of its contents.

I declare under penalty of perjury under the laws of the State of California that the content of the Questionnaire and the submittal in response to the Request for Prequalification is true and correct.

Executed at		,		on	
	(City)		(State)		(Date)

(Signature)

(Printed Name)

(Firm)

(Title)

The receipt of the following addenda is hereby acknowledged:

Addendum No. , dated

Addendum No. , dated

Addendum No. , dated

Reference Interview Questions

REFERENCE INTERVIEW QUESTIONS

Design Build General Contractor

The following questions will be used to interview selected contacts from at least one (1) of the recently completed projects. The County will select projects and conduct the interviews. No action on the Design Build Entity's part is necessary. *These questions are included in the package given to the Design Build Entity for information only.*

Design
Build
Entity: _____
Project #: _____
Project: _____
Brief Description: _____

1. Are there any outstanding stop notices, liens, or claims by the General Contractor that are currently unresolved on contracts for which notices of completion were recorded more than 120 days ago?
Yes No If "yes," how many separate instances? _____
2. On a scale of 1-10, with 10 being the best, did the General Contractor provide adequate personnel throughout the entirety of the construction phase?
Rating: _____
3. On a scale of 1-10, with 10 being the best, did the General Contractor provide adequate supervision?
Rating: _____
4. On a scale of 1-10, with 10 being the best, was there adequate equipment provided on the job?
Rating: _____
5. On a scale of 1-10, with 10 being the best, was the General Contractor timely in providing reports and other paperwork, including change order paperwork and scheduling updates?
Rating: _____
6. On a scale of 1-10, with 10 being the best, did the General Contractor adhere to the project schedule that your agency or business approved?
Rating: _____
7. Was the project completed on time?

Yes No If “no,” rate General Contractor responsibility: _____

8. On a scale of 1-10, with 10 being the best, rate the General Contractor on the timely submission of reasonable cost and time estimates to perform change order work.

Rating: _____

9. On a scale of 1-10, with 10 being the best, rate the General Contractor on how well it performed the work after a change order was issued, and how well it integrated the change order work into the existing work.

Rating: _____

10. On a scale of 1-10, with 10 being the best, rate how has the General Contractor performed in providing Operation & Maintenance manuals, completing as-built drawings, providing required training and taking care of warranty items?

Rating: _____

11. On a scale of 1-10, with 10 being the best, rate the General Contractor on whether there were an unusually high number of change order requests, given the nature of the project, or unusual difficulty in resolving them.

Rating: _____

12. On a scale of 1-10, with 10 being the highest, rate the General Contractor with respect to timely payments by it to sub-contractors and/or suppliers.

Rating: _____

13. On a scale of 1-10, with 10 being the best, rate the quality of the work overall.

Rating: _____

14. On a scale of 1-10, with 10 being the best, was the General Contractor collaborative with the owner and the architect?

Rating: _____

15. On a scale of 1-10, with 10 being the best, did the General Contractor try to resolve disputes in a fair and equitable manner.

Rating: _____

16. On a scale of 1-10, with 10 being the best, how well did the General Contractor work with the Design Build Architect.

Rating: _____

REFERENCE INTERVIEW QUESTIONS

Design Build Architect

The following questions will be used to interview selected contacts from at least one (1) of the recently completed projects. The County will select projects and conduct the interviews. No action on the Design Build Entity's part is necessary. *These questions are included in the package given to the Design Build Entity for information only.*

Design
Build

Entity: _____

Project #: _____

Project: _____

Brief Description: _____

1. Are there any outstanding stop notices, liens, or claims by the Architect that are currently unresolved on contracts for which notices of completion were recorded more than 120 days ago?

Yes

No

If "yes," how many separate instances? _____

2. On a scale of 1-10, with 10 being the best, did the Architect provide adequate personnel for the Design and Construction phases?

Rating: _____

3. On a scale of 1-10, with 10 being the best, did the Architect provide adequate supervision during the construction phase?

Rating: _____

4. On a scale of 1-10, with 10 being the best, did the Architect adhere to the concepts and requirements outlined in the bridging documents.

Rating: _____

5. On a scale of 1-10, with 10 being the best, was the Architect timely in providing reports and other paperwork, including design milestone updates and change order paperwork?

Rating: _____

6. On a scale of 1-10, with 10 being the best, did the Architect adhere to the project schedule that your agency or business approved?

Rating: _____

7. Was the project completed on time?

Yes

No

If "no," rate Architect responsibility: _____

8. On a scale of 1-10, with 10 being the best, rate the Architect on the timely submission of drawings and specifications to perform change order work.
Rating: _____
9. On a scale of 1-10, with 10 being the best, rate the Architect on how well it responded to requests from the General Contractor including RFIs, submittals, change order requests.
Rating: _____
10. On a scale of 1-10, with 10 being the best, rate the Architect on how well it works with its sub-consultants.
Rating: _____
11. On a scale of 1-10, with 10 being the best, rate the Architect on whether there were an unusually high number of change order requests, given the nature of the project, or unusual difficulty in resolving them.
Rating: _____
12. On a scale of 1-10, with 10 being the highest, rate the Architect on how well it works with “Authority Having Jurisdiction” (AHJ) and other regulatory agencies.
Rating: _____
13. On a scale of 1-10, with 10 being the best, rate the quality of the “design” work overall.
Rating: _____
14. On a scale of 1-10, with 10 being the best, was the Architect collaborative with the owner and the General Contractor?
Rating: _____
15. On a scale of 1-10, with 10 being the best, did the Architect try to resolve disputes in a fair and equitable manner.
Rating: _____

DOCUMENT 00 42 55

PROJECT MANAGEMENT, DESIGN & CONSTRUCTION EXPERTISE QUESTIONNAIRE

Answers to the following questions shall be submitted by the time and date indicated as the Qualifications and Proposal Deadline in Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers). It is mandatory that all Design-Build Entities provide a response to all questions contained within the Program Management, Design & Construction Expertise Questionnaire (Document 00 42 55). No Proposal will be accepted from a Design-Build Entity that has failed to comply with the requirements of the Program Management, Design & Construction Expertise Questionnaire. Proposal responses that fail to clearly present ALL of the requested information, present false or misleading information, or are not submitted in the format where the answers to each question are individually discernable may be considered non-responsive and rejected on that basis.

PART I. Technical Design & Construction Expertise:

- 1) **Describe your team’s core technical experience as it relates to the African American Wellness Hub (AAWH) or similar public health or community-serving projects.**
How does your experience demonstrate the ability to deliver high-performance, flexible-use facilities in an urban infill setting?
- 2) **Explain how you will translate your technical expertise to support Alameda County as a first-time Progressive Design-Build Owner?**
Describe how you will simplify decision-making around MEP systems, structural design, energy performance, and permitting.
- 3) **Describe your design-construction integration approach.**
How will you ensure seamless collaboration during Validation and Design phases, including constructability reviews and trade partner input?
- 4) **What quality assurance and technical review processes will you implement to ensure the facility meets performance expectations?**
How do these processes support long-term performance and Owner satisfaction?
- 5) **How will you assist the County in navigating permitting, code compliance, and agency approvals?**
How have these approaches added value in similar projects, and how could they benefit this project?
- 6) **Identify the lead technical staff proposed for this Project.**
What relevant experience do they bring from similar projects in public-sector or community health settings?

PART II. Project Management Team:

- 1) **Describe the structure and composition of your proposed project management team for the AAWH project.**
Who will be responsible for Project leadership, coordination, and delivery through the Validation and Design and Construction phases?
- 2) **What experience does your team have working with public agencies or Owners new to Progressive Design-Build?**
How has your team previously guided first-time Owners through alternative delivery projects?
- 3) **What strategies will your team use to ensure consistent collaboration and transparency with Alameda County project representatives?**

How will you support Owner engagement, especially during critical decision points?

4) How will your project leadership (e.g., Project Executive, PM, Design Manager) guide Alameda County through the Validation Phase?

What tools or frameworks will you use to support timely and confident Owner decisions?

5) How will your team coordinate with County staff and their consultants (e.g., Vanir, Commissioning Agent)?

Describe specific communication or integration methods you will employ.

6) What commitments are you making regarding responsiveness and accessibility?

How will your team ensure the County can reach key personnel when needed, particularly during design development?

7) Provide resumes and highlight relevant project experience for each key team member.

How have they contributed to successful outcomes on projects with similar budget, complexity, or public purpose?

PART III. Integrated Project Team:

1) Describe how you will establish and manage an Integrated Project Team (IPT) that includes the County, your team, and other stakeholders.

How will the IPT function in a collaborative and transparent way tailored for Alameda County's first PDB project?

2) How will you define and communicate roles, responsibilities, and decision-making processes within the IPT?

What will you do to ensure that County staff understand and feel empowered in their role?

3) What tools and collaboration methods (e.g., co-location, Teams, BIM platforms) will you use to facilitate joint decision-making?

How will these tools be accessible and intuitive for non-technical County staff?

4) How will you involve the County in activities such as design reviews, cost validation, and value management?

Describe your plan for ensuring their voice is consistently represented.

5) How will you proactively manage and resolve disagreements within the IPT?

What conflict resolution tools or facilitation strategies will you bring?

6) How will IPT performance be tracked and improved over time?

What feedback or review mechanisms will you use to support continuous improvement?

7) Share a specific example of an IPT you led on a similar civic or public project.

What were the outcomes and lessons learned?

PART IV. Project Approach:

1) Describe your overall strategy for delivering the AAWH project using Progressive Design-Build.

How will you structure your process to meet County goals and ensure successful onboarding for first-time PDB stakeholders?

2) How will your team build trust with Alameda County and other project participants?

Describe steps you will take to foster transparency, shared decision-making, and cultural alignment.

- 3) **How will you orient County staff and decision-makers to the Progressive Design-Build process?**
What educational or onboarding efforts will you offer?
- 4) **Describe how you will gather and integrate the County's input into the evolving design and delivery process.**
How will you ensure stakeholder priorities and needs are incorporated?
- 5) **Explain your plan for executing the Validation Phase.**
How will you confirm program requirements, align cost and schedule expectations, and provide clear Owner decision points?
- 6) **What is your strategy for managing changes in direction, scope, or priorities from Alameda County?**
How will you ensure flexibility while maintaining transparency and budget control?
- 7) **What tools or platforms will you use to communicate schedule, cost, and progress?**
How will these tools be tailored for public-sector staff unfamiliar with technical platforms?
- 8) **Share a relevant example of working with a public agency new to collaborative delivery.**
What communication methods proved effective, and what will you apply to this project?

PART V. Proposed Project Master Schedule:

- 1) **Describe your approach to developing and managing the Master Schedule for AAWH.**
How will you ensure it reflects key agency milestones, funding timelines, and third-party approval requirements?
- 2) **How will you integrate design, permitting, procurement, and construction activities into a cohesive schedule?**
Explain how this supports a seamless transition from Validation to full construction.
- 3) **What is your plan for the Validation Phase schedule?**
How will you sequence programming, design development, and cost alignment activities?
- 4) **What tools will you use to track and communicate schedule performance to Alameda County?**
How frequently will updates be shared, and in what format?
- 5) **What schedule risks do you anticipate for this project?**
How will you mitigate potential delays tied to agency reviews, CEQA, or utility coordination?
- 6) **Provide a project example where your team successfully managed a complex public schedule.**
What challenges did you overcome, and how?

PART VI. Budget Management and Cost Certainty:

- 1) **Describe your strategy for delivering the AAWH project within a defined budget.**
How will you maintain alignment between evolving design and the County's financial constraints?
- 2) **What processes will you use to track and control costs from Validation through**

construction?

Include how you will communicate changes, estimate updates, and align with County budget approval processes.

- 3) **How will you deliver early cost certainty to Alameda County?**
Describe your approach to GMP/Target Price development, including how you'll validate subcontractor pricing.
- 4) **What are the primary budget risks on this project, and how will you manage them?**
Describe your approach to managing escalation, scope growth, and value trade-offs.
- 5) **How will you ensure cost transparency throughout design and construction?**
Describe tools and meeting formats you'll use to communicate clearly with the County.
- 6) **Provide examples of value engineering or scope optimization from past civic projects.**
How did those efforts keep projects on budget without compromising goals?
- 7) **Who on your team is responsible for cost management, and what relevant experience do they bring?**
- 8) **What reporting tools will you use to keep the County informed of budget status?**
How frequently will these be delivered, and in what format?
- 9) **Provide a brief case study from a past Progressive Design-Build project.**
How did you maintain cost certainty, and what lessons apply to AAWH?

PART VII. Financial Management & Cost Transparency:

- 1) **Describe your proposed fee structure.**
How will you clearly explain design fees, overhead, general conditions, and profit to a first-time PDB Owner?
- 2) **Provide billing rates for key roles.**
How are these rates established, and how do you ensure they are competitive and appropriate?
- 3) **Explain how you define and manage direct vs. indirect costs.**
How do you clarify communicate these categories to Alameda County?
- 4) **Describe your open-book cost management practices?**
How will you present subcontractor bids, contingencies, markups, and savings transparently?
- 5) **How do you address fee or rate changes tied to scope shifts?**
What mechanisms are in place to manage this collaboratively?
- 6) **How you estimate and manage allowances, contingencies, and escalation.**
How will these elements be communicated to County Staff who may not have construction finance backgrounds?
- 7) **What financial controls and ethical practices does your team follow.**
How do you ensure transparency, accuracy, and integrity in public-funded project?

NOTE: If the Proposer is a corporation, set forth the legal name of the corporation together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If the Proposer is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership. By signing this Questionnaire, all signers represent and warrant that they are authorized to sign this Questionnaire on behalf of Proposer.

Design-Build Entity: _____

DOCUMENT 00 43 20

STIPEND AGREEMENT

This (“**Stipend Agreement**”) is entered into by and between the COUNTY OF ALAMEDA and _____ (“**Proposer**”) and is effective as of _____ (“**Effective Date**”).

RECITALS

WHEREAS, Proposer is one of _____ (__) Proposers who submitted a responsive Request for Statement of Interest Letter in response to County’s Request for Statement of Interest Letters of Design-Build Entities in the Best Value selection process for the design and construction of the **African American Wellness Hub Project** (“**Project**”) paid for in whole or in part by County funds;

WHEREAS, County has invited responsive Design-Build Entities to participate in the Request for Qualifications and Proposal, which includes Qualifications, Technical Design & Construction Expertise, Price Proposal, and Interview/Presentation process enunciated in the County’s Request for Qualifications and Proposal – Instructions to Proposers (Document 00 21 16) and authorized by Public Contract Code § 22185 et seq.;

WHEREAS, Public Contract Code § 20129 requires all Proposers to submit some form of Proposal security;

WHEREAS, Proposer seeks an opportunity to participate in Request for Qualifications and Proposal of the County’s selection process, which involves confidential discussions and communications with County concerning certain details of its Qualifications and Proposal Package including, without limitation, how each architectural and engineering system of Proposer’s design addresses the County’s Criteria Documents and the various evaluation factors, including but not limited to Skilled Labor Availability & Safety Record, Qualifications, Technical Design & Construction Experience, Cost, and Interview/Presentation and County seeks to elicit information and make a determination that a particular Proposer’s Qualifications Package is competitively superior to Qualifications and Proposal received from the other Proposers;

WHEREAS, the County will benefit from all design and construction concepts, ideas, and materials discussed or submitted by all Proposers in response to the Request for Qualifications and Proposal – Instructions to Proposers (Document 00 21 16);

WHEREAS, during the potential Request for Supplemental Information process enunciated in the County’s Request for Qualifications and Proposal – Instructions to Proposers (Document 00 21 16), Proposer may have an opportunity to refine and adapt its Qualifications and Proposal Package as appropriate to best address the County’s priorities and to enhance its chances of being chosen as the Proposer whose Qualifications and Proposal is competitively superior to the other Proposers and otherwise offers the Best Value to County;

WHEREAS, Proposer seeks, and County is willing to compensate Proposer, for some of the efforts County anticipates Proposer will expend in developing, refining, and enhancing its Qualifications and Proposal during the pre-Qualifications and Proposal process and any Request for Supplemental Information process enunciated in County’s Request for Qualifications and Proposal – Instructions to Proposers (Document 00 21 16);

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, stipulated, and agreed, Proposer and County hereby agree as follows:

1. County shall have the Proposer Finalists participate in the Request for Qualifications and Proposal evaluation and selection process.
2. Each of the Finalists shall ensure their entire Proposal security remains in place throughout the interview, selection, and award process. In the event any Finalist's price is modified during the interview and selection process, that Finalist shall ensure its Proposal security remains in a sum required by Public Contract Code § 20129.
3. The Finalist(s) who submitted responsive Qualifications and Proposal(s) but, not awarded the Contract shall be paid a \$15,000 stipend by the County.
4. All Qualifications and Proposal Packages and other submissions and concepts discussed by any Proposer during the interview and selection process shall become the property of the County.
5. Miscellaneous. No provision of this Stipend Agreement may be modified or amended, nor shall any term be waived, except expressly in a writing signed by all parties hereto. Should any part, term, or provision of this Stipend Agreement, be declared invalid, void, or unenforceable, in general or in one or more specific instances, all remaining parts, terms, and provisions of this Stipend Agreement shall remain in full force and effect in all other instances and shall in no way be invalidated, impaired or affected thereby. This Stipend Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, and (except as otherwise provided herein) shall be governed by California law.

IN WITNESS WHEREOF, the parties hereto have executed this Stipend Agreement as of the Effective Date provided above.

COUNTY: COUNTY OF ALAMEDA

PROPOSER: Name of Finalist

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to Form: COUNTY OF ALAMEDA

By: _____

Name: _____

Title: _____

Date: _____

END OF DOCUMENT

DOCUMENT 00 43 36

DESIGNATED SUBCONTRACTORS LIST

PROJECT: African American Wellness Hub Project No. 22016

Design-Build Entity must list hereinafter the name and location of each Subcontractor and Subconsultant who will be employed, and the kind of Work that each will perform if the Contract is awarded to the Proposer (**See Clarification at the bottom of this page**). Proposer acknowledges and agrees that under Public Contract Code § 4100, et seq., it must clearly set forth below the name and location of each Subcontractor who will perform work or labor or render service to the Proposer in or about the construction of the Work in an amount in excess of one-half of one percent (1/2 of 1%) of Proposer's total Final Guaranteed Maximum Price ("Final GMP"), and that as to any Work that Proposer fails to list, Proposer agrees to perform that portion itself or be subjected to penalty under applicable law.

In case more than one Subcontractor is named for the same kind of Work, state the portion that each will perform. Vendors or suppliers of only materials do not need to be listed.

If further space is required for the list of proposed Subcontractors, additional sheets showing the required information, as indicated below, shall be attached hereto and made a part of this Document.

CLARIFICATION: Document 00 43 36 (Designated Subcontractor List) shall be provided by Design-Build Entity at the time Design-Build Entity submits its Statement of Qualifications and Proposal response to the RFQ. The identified subs at that time are identified in specification 00 21 16. The attached form shall be updated and resubmitted for each Design-Build Entity Subcontractor Bid Package buyout as the GMP process develops and after the GMP for any sub trades who are not identified prior to the final GMP (as applicable).

(1) (4) Name and City of Subcontractor	(1) Description of Work: Reference to Contract Items	(2) (3) Dollar Value of Subcontract	Subcontractor's License Numbers.		
			(1) California Contractors State License Board License No.	(1) Dept. of Industrial Relations Public Works Contractor Registration No.	(2) Business License and City/County Issued

(Proposer to attach additional sheet(s) if necessary)

- (1) Submit this information with each Subcontractor Bid Package.
- (2) This information shall be required of the apparent low bid Subcontractor no later than twenty-four (24) hours following the submission of the Final GMP for the sub trades identified at that time. **NOT REQUIRED WITH RFQ PROPOSAL.**
- (3) Dollar amount will be treated as proprietary and will solely be for the use of County staff. **NOT REQUIRED WITH RFQ PROPOSAL.**
- (4) Submit full address of Subcontractors twenty-four (24) hours following the opening of each Subcontractor Bid Package for awards after final GMP.

END OF DOCUMENT

DOCUMENT 00 45 10

DESIGN-BUILD ENTITY REGISTRATION AND SAFETY EXPERIENCE FORM

INSTRUCTIONS

IN ORDER TO PROPOSE TO UNDERTAKE WORK FOR THE COUNTY OF ALAMEDA, YOU MUST DO THE FOLLOWING:

- 1) FILL OUT THIS FORM COMPLETELY; DO NOT LEAVE BLANKS.
- 2) PROVIDE CERTIFICATES OF INSURANCE COMPLYING WITH DOCUMENTS 00 72 53 (GENERAL CONDITIONS) AND 00 73 16 (INSURANCE REQUIREMENTS).

REGISTRATION

CONTRACTORS LICENSE # _____

DATE: _____ FED TAX I.D. # _____

FULL CORPORATE NAME OF DESIGN-BUILD ENTITY COMPANY, IF FORMED, OR OF EACH CORE ORGANIZATION (GENERAL CONTRACTOR AND ARCHITECT); ATTACH ADDITIONAL SHEETS AS NECESSARY:

STREET ADDRESS: _____

MAILING ADDRESS: _____

PHONE: _____ FAX: _____

NAME OF PRINCIPAL CONTACT: _____

TYPE OF BUSINESS: _____ Sole Proprietor _____ Partnership
 _____ Non-Profit 501(c)(3) _____ Corporation
 _____ Other (Please explain below)

INSURANCE

COMMERCIAL GENERAL LIABILITY:

CARRIER: _____

ADDRESS: _____

PHONE: _____

POLICY NUMBER: _____ Deductible: \$ _____

POLICY LIMITS: \$ _____ Self-Insured Retention: \$ _____

COMMERCIAL AUTOMOBILE LIABILITY:

CARRIER: _____

ADDRESS: _____

PHONE: _____

POLICY NUMBER: _____ Deductible: \$ _____

POLICY LIMITS: \$ _____ Self-Insured Retention: \$ _____

BUILDER'S RISK:

CARRIER: _____

ADDRESS: _____

PHONE: _____

POLICY NUMBER: _____ Deductible: \$ _____

POLICY LIMITS: \$ _____ Self-Insured Retention: \$ _____

PERILS COVERED: _____

WORKER'S COMPENSATION:

CARRIER: _____

ADDRESS: _____

PHONE: _____

POLICY NUMBER: _____ Deductible: \$ _____

POLICY LIMITS: \$ _____ Self-Insured Retention: \$ _____

UMBRELLA/EXCESS LIABILITY:

CARRIER: _____

ADDRESS: _____

PHONE: _____

POLICY NUMBER: _____ Deductible: \$ _____

POLICY LIMITS: \$ _____ Self-Insured Retention: \$ _____

PROFESSIONAL LIABILITY:

CARRIER: _____

ADDRESS: _____

PHONE: _____

POLICY NUMBER: _____ Deductible: \$ _____

POLICY LIMITS: \$ _____ Self-Insured Retention: \$ _____

SAFETY EXPERIENCE

The following statements as to the Proposer's safety experience are submitted with the Qualifications and Proposal, as part thereof, and the Proposer guarantees the truthfulness and accuracy of all information.

1. List your organization's interstate Experience Modification Rate for the last three (3) years.
Past Year 3 _____ Past Year 2 _____ Past Year 1 _____
2. Use your last year's Cal/OSHA 200 log to fill in the following number of injuries and illnesses:
 - a. Number of lost workday cases _____
 - b. Number of medical treatment cases _____
 - c. Number of fatalities _____
3. Employee hours worked last year _____
4. State the name of your organization's safety engineer/manager:

Attach a resume or outline of this individual's safety and health qualifications and experience.

I CERTIFY, UNDER PENALTY OF PERJURY, THAT THE FOREGOING INFORMATION IS CURRENT AND ACCURATE, AND I AUTHORIZE THE COUNTY OF ALAMEDA, AND ITS AGENTS AND REPRESENTATIVES, TO OBTAIN A CREDIT REPORT AND/OR VERIFY ANY OF THE ABOVE INFORMATION.

[_____] / Name of Design-Build Entity / Proposer

By: _____
Signature

Its: _____
Title

Date

END OF DOCUMENT

DOCUMENT 00 45 40

DESIGN-BUILD ENTITY CERTIFICATIONS

TO BE EXECUTED BY ALL DESIGN-BUILD ENTITIES AND SUBMITTED WITH
QUALIFICATIONS.AND PROPOSAL

The undersigned Design-Build Entity certifies to the COUNTY OF ALAMEDA ("County"), as is set forth in paragraphs 1 through 15 below, all under the penalty of perjury, that:

1. **CERTIFICATE OF NONDISCRIMINATION:** There will be no discrimination in employment with regard to race, color, religion, gender, sexual orientation, or national origin; that all federal, state, and local laws, regulations, directives, and executive orders regarding nondiscrimination in employment will be complied with; and the principle of equal opportunity in employment will be demonstrated positively and aggressively.
2. **STATEMENT OF CONVICTIONS:** No final, unappealable finding of contempt of court by a Federal Court has been issued against Design-Build Entity within the past two (2) years because of failure to comply with an order of a Federal Court or to comply with an order of the National Labor Relations Board.
3. **PREVIOUS DISQUALIFICATION:** Neither the below indicated Design-Build Entity or any of its officers or employees with a proprietary interest in such Design-Build Entity has ever been disqualified, removed, or otherwise prevented from proposing on, or completing a Federal, State, or local government project because of a violation of law or a safety regulation except as indicated on the separate sheet attached hereto entitled "Previous Disqualifications." If such exceptions are attached, explain the circumstances in the attachment.
4. **CERTIFICATION OF WORKER'S COMPENSATION INSURANCE:** I am aware of the provisions of Labor Code § 3700 which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this Contract.
5. **CERTIFICATION OF PREVAILING WAGE RATES AND RECORDS:** I am aware of the provisions of California State Labor Code § 1773 and/or Federal Code 40 U.S.C. § 3142, which requires the payment of prevailing wage on public projects. Also, Design-Build Entity certifies that Design-Build Entity and all of its Subcontractors shall comply with California State Labor Code § 1776 and/or Federal Labor Code 29 CFR Part 516, regarding wage records, and with California State Labor Code § 1777.5, and/or Federal Labor Code 29 C.F.R. § 5.2(j), regarding the employment and training of apprentices. It is Design-Build Entity's responsibility to ensure compliance by any and all contractors and Subcontractors performing Work under the Contract. I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with forty-eight (48) hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project.
6. **CERTIFICATION OF APPRENTICESHIP PROGRAM PARTICIPATION:** Design-Build Entity is a party to an agreement with a registered apprenticeship program approved by the California Apprenticeship Council which has graduated apprentices in each of the preceding five (5) years (provided that this graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five (5) years prior to enactment of Public

Contract Code § 20133), and that attached hereto is a copy of that agreement, which is true and correct and in full force and effect.

7. **CERTIFICATION OF ACCEPTABLE SAFETY RECORD:** Design-Build Entity's experience modification rate for the most recent three (3) year period is an average of 1.00 or less, and its average Total Recordable Injury/Illness rate and average lost work rate for the most recent three (3) year period does not exceed the applicable statistical standards for its business category or if Design-Build Entity is a party to an alternative dispute resolution system as provided for in Labor Code § 3201.5.

8. **CERTIFICATION REGARDING SELECTION PROCESS.**

[Check and/or complete one of the following]

_____ Design-Build Entity has no objections or protests to any Design-Build Entity selection procedure, process or requirement, or any other aspect of Design-Build Entity selection process and does not object to any aspect of Design-Build Entity selection process.

_____ Attached as an appendix to its Qualifications and Proposal, consisting of _____ pages, is a detailed description of all of Design-Build Entity's objections or protests regarding any aspect of Design-Build Entity selection process. **Design-Build Entity must attach an appendix to its Qualifications and Proposal if this item is checked and comply with Article 18 of Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers).**

9. **CERTIFICATION REGARDING MATERIAL CHANGES.**

[Check and/or complete one of the following]

_____ All information Design-Build Entity submitted to County in connection with the Qualification process, including without limitation its Qualification Questionnaire, and any modifications, amendments, or supplements thereto remains true and correct in all material respects as of the date of submitting its Qualifications and Proposal. All financial information Design-Build Entity submitted to County in connection with the Qualification process remains an accurate representation of the financial strength of Design-Build Entity and its core Subcontractors and Subconsultants.

_____ Except as identified in Design-Build Entity's Material Changes List submitted with Design-Build Entity's Qualifications and Proposal, submitted as provided in Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers), all information Design-Build Entity submitted to County in connection with the Qualification process, including without limitation its Qualification Questionnaire, and any modifications, amendments, or supplements thereto remains true and correct in all material respects as of the date of submitting its Qualifications and Proposal. Except as identified in Design-Build Entity's Material Changes List submitted with Design-Build Entity's Qualifications, submitted as provided in Document 00 21 16 (Request for Qualifications and Proposal – Instructions to Proposers), all financial information Proposer submitted to County in connection with the Qualification process remains an accurate representation of the financial strength of Design-Build Entity and its core Subcontractors and Subconsultants.

10. **CERTIFICATION REGARDING USE AND OWNERSHIP OF INFORMATION:** All rights to information developed, disclosed, or provided in the undersigned's Qualifications and Proposal and the attendant submissions are the property of County, unless Design-Build Entity makes specific reference to data that is considered proprietary. To the extent the undersigned Design-Build Entity claims any copyright, patent, or other property right in any portion of its Qualifications and Proposal, submission of a Qualifications and Proposal constitutes Design-Build Entity's express (a) grant and assignment of a perpetual, transferable (in whole or in part), non-exclusive, royalty-free license to

County for all such portions, and (b) agreement that County may use any such intellectual property without charge for any lawful purpose in connection with its County project, including without limitation to the creation of derivative works and issuance of sublicenses.

11. **CERTIFICATION REGARDING GOVERNMENT CODE SECTION 4420:** Design-Build Entity does not have serious or willful violations of Part 1 (commencing with § 6300) of Division 5 of the Labor Code, during the past five (5) year period or Design-Build Entity is taking appropriate corrective action to prevent further violations of Part 1 of Division 5 of the Labor Code; and Design-Build Entity has an injury prevention program in place pursuant to Labor Code § 3201.5 or § 6401.7.
12. **CERTIFICATION REGARDING HAZARDOUS MATERIALS**
 - 12.1 Design-Build Entity hereby certifies that no Asbestos, or Asbestos Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations (“New Hazardous Material”), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Design-Build Entity 's work on the Project for County.
 - 12.2 Design-Build Entity further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.
 - 12.3 Asbestos and/or asbestos containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (0.1%) asbestos shall be defined as asbestos containing material.
 - 12.4 Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the County’s determination. The costs of any such tests shall be paid by Design-Build Entity if the material is found to be New Hazardous Material.
 - 12.5 All work or materials found to be New Hazardous Material or work or material installed with equipment containing “New Hazardous Material” will be immediately rejected and this work will be removed at Design-Build Entity’s expense at no additional cost to the County.
13. **CERTIFICATION OF ACCEPTANCE OF PROJECT STABILIZATION/COMMUNITY BENEFITS AGREEMENT:** Design-Build Entity Certifies that they will comply with all requirements of Document 00 73 49 (Project Stabilization/Community Benefits Agreement (“PSCBA”)) including but not limited to the First Amended and Restated Project Stabilization/Community Benefits Agreement of the County of Alameda dated October 6, 2020.
14. **CONFLICT OF INTEREST POLICY:** Public Contracts Code § 22162(c) requires the County to develop an organizational conflict of interest policy regarding the ability of a person or entity that performs services for the local agency relating to the solicitation of a design-build project to submit a qualifications and proposal as a Design-Build Entity, or to join a design-build team. County of Alameda Organizational Conflict of Interest Policy for Design-Build Construction Projects per Public Contract Code Section 22162 titled (Organizational Conflict of Interest Policy for Design-Build Construction Projects) Document 00 45 40A. Design-Build Entity certifies it has read, understands, and is in compliance with County’s Organizational Conflict of Interest Policy for Design-Build Construction Projects.

15. **DEFINITIONS**

All capitalized terms not otherwise defined in these Design-Build Entity Certifications shall have the meanings provided in Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers) or Section 01 42 00 (References and Definitions).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this certification is executed on _____[date], at _____[city], ____[state].

Design-Build Entity: _____
[Name of Design-Build Entity]

By: _____
[Signature]

Name: _____
[Printed Name]

Its: _____
[Title]

Dated: _____

Attachments:
Previous Disqualifications, if any
Registered Apprenticeship Program
Objections or Protests, if any

END OF DOCUMENT

**CONFLICT OF INTEREST POLICY**

WILLIE A. HOPKINS, JR., Director

1401 LAKESIDE DRIVE, OAKLAND, CALIFORNIA 94612 510 208 9700 FAX 510 208 9711 WWW.ACGOV.ORG/GSA/

June 28, 2019

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, California 94612-4305

SUBJECT: ADOPTION OF ORGANIZATIONAL CONFLICT OF INTEREST POLICY
FOR DESIGN-BUILD CONSTRUCTION PROJECTS

Dear Board Members:

RECOMMENDATION:

Adopt the Alameda County Organizational Conflict of Interest Policy for Design-Build Construction Projects per Public Contract Code Section 22162, and incorporate the policy into the Uniform Procurement Manual.

DISCUSSION/SUMMARY:

Organizational conflicts of interest can occur in the design-build procurement process when a person or entity that performs services for a local agency relating to the solicitation of a design-build project seeks to submit a proposal to the County as a design-built entity or join a design-build team, thereby making that person or entity unable or potentially unable to render impartial assistance or advice to the County, impairing the objectivity of that person or entity in performing the contract work, or giving that person or entity an unfair competitive advantage.

Public Contract Code (PCC) Section 22162 requires local agencies to establish an Organizational Conflict of Interest policy that applies to Design-Build construction projects procured pursuant to PCC Section 22160 et seq. This policy will apply countywide to any future design-build projects.

Upon adoption, the Alameda County Conflict of Interest Policy will be posted on the Alameda County General Services Agency-Procurement website under 'Doing Business With Us' link.

FINANCING:

Adoption of the Conflict of Interest Policy will result in no net County cost.

CONTRACT OF INTEREST POLICY

VISION 2026 GOAL:

The adoption of this policy advances the 10X Goal pathways of **Employment for All** in support of our shared vision of a **Prosperous and Vibrant Economy.**

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Willie A. Hopkins, Jr.", with a long horizontal flourish extending to the right.

Willie A. Hopkins, Jr.
Director, General Services Agency

Attachment

cc: County Administrator
Auditor-Controller
County Counsel

CONTRACT OF INTEREST POLICY

ALAMEDA COUNTY

ORGANIZATIONAL CONFLICT-OF-INTEREST POLICY
FOR DESIGN-BUILD PROJECTS**PURPOSE**

Public Contract Code Section 22162 requires local agencies to establish an organizational conflict-of-interest policy that applies to design-build projects procured pursuant to Public Contract Code section 22160 et seq. Organizational conflicts of interest can occur in the design-build procurement process when a person or entity that performs services for a local agency relating to the solicitation of a design-build project seeks to submit a proposal to the County as a design-build entity or join a design-build team, thereby making that person or entity unable or potentially unable to render impartial assistance or advice to the County, impairing the objectivity of that person or entity in performing the contract work, or giving that person or entity an unfair competitive advantage.

POLICYA. Defined Terms.

1. "Design-Build" means a project delivery process in which both the design and construction of a project are procured from a single entity.
2. "Design-Build Entity" means a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a Design-Build contract.
3. "Design-Build Team" means a Design-Build Entity and the individuals and other entities identified by the Design-Build Entity as members of its team. Members of a Design-Build Team include the general contractor and, if utilized in the design of the project, all electrical, mechanical, and plumbing contractors.
4. "Proposer" means any consultant or contractor that seeks to submit a proposal to the County as a Design-Build Entity or to join a Design-Build Team.

B. Organizational Conflicts of Interest.

1. A Proposer may not have any organizational conflicts of interest.
2. "Organizational conflicts of interest" are circumstances arising out of a consultant's or contractor's existing or past activities, business or financial interests, familial relationships, contractual relationships, and/or organizational structure (e.g., parent entities and their subsidiaries and affiliates) that results in: (i) the impairment or potential impairment of a consultant's or contractor's ability to render impartial

CONTRACT OF INTEREST POLICY

assistance or advice to the County or of its objectivity in performing work for the County; (ii) an unfair competitive advantage for any bidder or Proposer with respect to a County procurement; or (iii) a perception or appearance of impropriety with respect to any of the County's procurements or contracts or a perception or appearance of unfair competitive advantage with respect to a procurement by the County (regardless of whether any such perception is accurate).

3. An organizational conflict of interest exists in the following instances:

- a. A Proposer is the County's general engineering or architectural consultant to the Design-Build project, except that a subconsultant to the general engineering or architectural consultant that has not yet performed work on the contract to provide services for the design-build project may participate as a proposer or join a Design-Build Team if it terminates the agreement to provide work and provides no work for the County's general engineering or architectural consultant on the Design-Build project.
- b. A Proposer has assisted or is assisting the County in the management of the Design-Build project, including the preparation of the request for proposals, evaluation criteria, or any other aspect of the procurement.
- c. A Proposer has conducted preliminary design services for the Design-Build project, such as conceptual layouts, preliminary design, or preparation of bridging documents.
- d. A Proposer performed design work related to the Design-Build project for other stakeholders in the Design-Built project.
- e. A Proposer performed design work on a previous contract that specifically excludes it from participating as a proposer or joining a Design-Build Team for the Design-Build project.
- f. A Proposer is under contract with any other entity or stakeholder to perform oversight of the Design-Build project.
- g. A Proposer has obtained advice from, or discussed any aspect relating to the Design-Build project or procurement of the Design-Build project with, any person or entity with an organizational conflict of interest, including, but not limited to, the consultants of any entity that have provided technical support on the Design-Build project.
- h. Any circumstances that would violate California Government Code section 1090, et seq.

C. Obligations of Proposers.

1. Proposers shall make a full written disclosure to the County of the facts and circumstances regarding an organizational conflict of interest or a potential organizational conflict of interest, and shall have a continuing obligation to do so until they are no longer Proposers.

CONTRACT OF INTEREST POLICY

2. Proposers shall disclose all relevant facts relating to past, present or planned interests of the Proposer's Design-Build Team (including the Proposer, Proposer's proposed consultants and subconsultants and subcontractors and their respective directors and key personnel) that may result in, or could be viewed as, an organizational conflict of interest in connection with any Design-Build project procurement, including present or planned contractual or employment relationships with any current County employee.
3. Proposers shall disclose in the response documents to a Design-Build request for qualifications and request for proposals, all the work performed in relation to the particular proposed Design-Build project.
4. If a Proposer determines that a conflict of interest or potential conflict of interest exists, it must disclose the conflict or potential conflict of interest to the County. The disclosure may not necessarily disqualify a Proposer from being awarded a contract. The Proposer shall propose measures to avoid, neutralize, or mitigate all conflicts or potential conflicts. The County, in its sole discretion, shall determine whether the proposed measures are sufficient to overcome the conflict or potential conflict and whether the Proposer may continue with the procurement process. The County has the right to cancel or amend a resulting Design-Build project contract if the successful Proposer failed to disclose a conflict or potential conflict that it knew or should have known about, or if the Proposer provided information in its disclosure that is false or misleading.
5. For other conflicts or potential conflicts not mentioned specifically above, such as conflicts involving employees changing companies, mergers and acquisitions of firms, property ownership, business arrangements, and financial interests, a Proposer shall disclose and address any organizational conflicts of interest or potential organizational conflicts of interest when participating in or joining a Design-Build Team. The County will determine if a conflict of interest exists.

D. Obligations After Contract Award.

The successful Proposer to whom a contract is awarded ("Contractor") has an ongoing obligation to monitor and disclose its conflicts or potential conflicts of interest. The County has the right to ongoing enforcement of this policy. If an organizational conflict of interest is discovered after contract award, the Contractor must make an immediate and full written disclosure to the County that includes a description of the action that the Contractor has taken or proposes to take to avoid or mitigate the conflict. If an organizational conflict of interest is determined to exist and the Contractor was aware of an organizational conflict of interest prior to award of the contract and did not disclose the conflict, the County may terminate the contract. If the contract is terminated, the County assumes no obligations, responsibilities and liabilities to reimburse all or part of the costs incurred or alleged to have been incurred by Contractor and is entitled to pursue any available legal remedies.

CONTRACT OF INTEREST POLICY

E. Incorporation by Reference.

This policy shall be incorporated by reference into and included as part of all County Design-Build project requests for qualifications and requests for proposals, and all County Design-Built contracts.

APPROVED BY THE ALAMEDA COUNTY BOARD OF SUPERVISORS ON

DOCUMENT 00 51 00
NOTICE OF INTENT TO AWARD

DATE ISSUED: _____

TO: [Insert name and address of first, (cc to) second and third ranked Proposers]

PROJECT AUTHORIZATION NUMBER:

PROJECT TITLE: African American Wellness Hub Project

[_____], the [TITLE _____], intends to recommend to the Alameda County the award of the Contract for the above-referenced Project to

(Name of Design-Build Entity)

SIGNATURE _____ DATE _____

[_____],

[_____]

[Title]

END OF DOCUMENT

DOCUMENT 00 51 10

NOTICE OF AWARD

Dated _____, 202__.

TO: [Insert name, as Design-Build Entity and cc to all parties who requested County provide such notice]

ADDRESS:

CONTRACT FOR PROGRESSIVE DESIGN-BUILD SERVICES

for the

African American Wellness Hub

COUNTY AUTHORIZATION NO. 22016

Based on the County's evaluation and scoring of Qualifications and Proposal submitted on [Insert date], according to the criteria in Document 00 21 16 (Request for Qualifications and Proposal – Instructions to Proposers), on [Insert date] the County awarded _____ (name of Design-Build Entity) the Contract for the above Project for progressive design-build services.

The Contract Sum of the Contract is \$ _____ Dollars (\$ _____), which includes: (1) _____ Dollars (\$ _____) as a lump sum amount for completion of the of the Design and Preconstruction through County's acceptance of Final GMP; plus (2) _____ Dollars (\$ _____) for the Initial GMP, which includes the Design-Build Entity's estimated Direct Cost of the Work plus Indirect Costs (Fixed Percentage Rates for General Conditions, Construction Overhead and Profit, Payment and Performance Bond Premium Rate, and Insurance Premium Rate), as provided in Document 00 52 00 (Agreement) subject to any additions and deductions by Contract Modification, as provided in the Contract Documents.

Upon commencement of the Work, you and each of your Subcontractors and Subconsultants, as applicable, shall certify and make available for inspection payroll records on forms provided by the Division of Labor Standards Enforcement, in accordance with § 1776 of the California Labor Code.

In accordance with Article 24 of Document 00 21 16 (Request for Qualifications and Proposal – Instructions to Proposers), you must comply with the following conditions precedent within ten (10) Days of the date of this Notice of Award, that is by [Insert date]:

1. Deliver to County three (3) fully executed counterparts of Document 00 52 00 (Agreement) each bearing successful Proposer's authorized original signature(s) where required.
2. Deliver to County Document 00 61 13.13 (Performance Bond) executed by successful Proposer and its Surety in the penal amount of the Initial GMP/Contract Sum.

3. Deliver to County Document 00 61 13.16 (Payment Bond) executed by successful Proposer and its Surety in the penal amount of the Contract Sum.
4. Deliver to County Document 00 65 36 (Project Warranty and Correction Guarantee) executed by successful Proposer.
5. Deliver to County all insurance information and certificates required by Document 00 73 16 (Insurance Requirements).
6. Deliver to County the documentary evidence received or generated by successful Proposer in preparation of your Qualifications and Proposal, as set forth in Document 00 54 27 (Escrow Bid Documents).

Failure to fully comply with these conditions within the time specified will entitle County to consider your Qualifications and Proposal abandoned, to annul this Notice of Award. The County may then negotiate with the second or third ranked Proposers:

Second Ranked Proposer:

Third Ranked Proposer:

Within fifteen (15) Days after you fully comply with these conditions, County will return to you a fully signed counterpart of the Agreement.

COUNTY OF ALAMEDA

By: _____

Attest: _____
Secretary

END OF DOCUMENT

AGREEMENT

FOR PROGRESSIVE DESIGN-BUILD SERVICES

FOR THE

AFRICAN AMERICAN WELLNESS HUB PROJECT

PROJECT NO. 22016

TABLE OF CONTENTS

	<u>Page</u>
1. SCOPE OF WORK/DESCRIPTION OF PHASED WORK AND SERVICES.....	1
2. GENERAL DESCRIPTION OF WORK AND SERVICES.....	2
3. SEQUENCE OF PHASED WORK.....	3
4. INCREMENTAL FINAL GMP PROPOSALS.....	6
5. AUTHORIZATION TO PERFORM WORK BY PHASE.....	9
6. COUNTY’S PROJECT MANAGER AND REPRESENTATIVES.....	9
7. CONTRACT TIME AND LIQUIDATED DAMAGES.....	9
8. CONTRACT SUM AND BASIS FOR PAYMENT.....	11
9. DESIGN-BUILD ENTITY’S REPRESENTATIONS AND WARRANTIES.....	17
10. CONTRACT DOCUMENTS.....	19
11. MISCELLANEOUS.....	20

DOCUMENT 00 52 00

AGREEMENT

FOR PROGRESSIVE DESIGN-BUILD SERVICES
FOR THE

AFRICAN AMERICAN WELLNESS HUB PROJECT

THIS AGREEMENT FOR PROGRESSIVE DESIGN-BUILD SERVICES ("Agreement"), made this _____ day of _____, 202__, by and between [*Design-Build Entity Name*], a [*State of incorporation / formation*] [*corporation / limited liability company / joint venture*] whose place of business is at _____ hereinafter referred to as "Design-Build Entity", and the COUNTY OF ALAMEDA, a political subdivision of the State of California, hereinafter referred to as "County" or "Owner."

In consideration of the mutual covenants hereinafter set forth, Design-Build Entity and County agree as follows:

1. **SCOPE OF WORK/DESCRIPTION OF PHASED WORK AND SERVICES.** Design-Build Entity shall provide all planning, design, and preconstruction services and construction necessary to complete all Work for the Project required by the Contract Documents including, but not limited to, the requirements set forth herein, and in the Scope of Work Summary in the County's Criteria Documents. The Work will be performed in the Phases described below. Each phase identified below may be individually referred to as a "Phase" or collectively as the "Phases." The Scope of Work includes distinct Components, each of which is anticipated to be publicly issued for bid (alone or in combination with other Components) by the Design-Build Entity to applicable trade Subcontractors as Bid Packages in accordance with Design-Build Entity's Final GMP Development Plan, as approved by County. It is anticipated that Phase II Work and other mutually agreed Components of the Work will proceed concurrently with Phase I Work.

- 1.1 **Design and Preconstruction through Acceptance of Final GMP Proposal ("Phase I").** Design and preconstruction activities encompass all services required to develop two (2) or more Incremental Final Guaranteed Maximum Price ("Final GMP" or "FGMP") proposals for designated Work Components as further described in Article 4 below. Phase I of Work involves several critical stages:

- 1.1.1 Programming: Conducting detailed programming to define Project requirements, objectives, and constraints.
- 1.1.2 Concept Design: Developing initial design concepts to explore potential solutions and establish a clear direction for the Project.
- 1.1.3 Schematic Design: Creating schematic designs to further refine the Project concepts, including preliminary layouts and design features.
- 1.1.4 Design Development: Advancing the design from the schematic phase to a more detailed and defined plan, incorporating Technical Specifications and materials.
- 1.1.5 Preconstruction Activities: (1) Preparing, verifying, updating, and providing recommendations regarding the Construction Schedule; (2) conducting Site logistic management activities; (3) identifying and scheduling long lead-time equipment and materials; (4) performing constructability analysis and design coordination; (5) performing value engineering recommendations for alternatives to construction means and methods of performing the Work as well as substitution of Equal materials to assist in achieving the County's objectives for time of

construction, construction cost, and functional performance; and (6) Subcontractor bidding, if applicable.

- 1.1.6 Final GMP Development: Preparing a comprehensive plan for incremental development of a Final Guaranteed Maximum Price Proposal, which includes detailed cost estimates, budget planning, schedule for and content of Bid Packages for Subcontractor procurement of Work Components based on the developed designs.

1.2 **Remaining Design, Preconstruction, and Construction after Final GMP Proposal Acceptance (“Phase II”)**. The Work for Phase II includes all activities following the acceptance of the Final Guaranteed Maximum Price (“Final GMP” or “FGMP”) proposal, which includes the remaining Design, Preconstruction, and Construction activities sufficient to complete and closeout the Project, consistent with the County accepted Final GMP. Phase II may, in the County’s sole and absolute discretion, be authorized in writing to proceed, and includes:

- 1.2.1 Finalizing Construction Documents: Completing and detailing all Construction Documents to provide clear, precise, and comprehensive instructions for the construction phase.

- 1.2.2 Preconstruction Activities: (1) Preparing, verifying, updating, and providing recommendations regarding the Construction Schedule; (2) conducting Site logistic management activities; (3) identifying and scheduling long lead-time equipment and materials; (4) performing constructability analysis and design coordination; (5) performing value engineering recommendations for alternatives to construction means and methods of performing the Work as well as substitution of materials to assist in achieving the County’s objectives for time of construction, budget, and functional performance; and (6) Subcontractor bidding, if applicable.

- 1.2.3 Construction Services: Executing the construction Work according to the finalized and County-approved Construction Documents, including project management, coordination, quality control, ensuring adherence to the Project Master Schedule and budget , and timely completion of Project closeout requirements.

2. **GENERAL DESCRIPTION OF WORK AND SERVICES.** Design-Build Entity shall, in a good and workmanlike manner and in accordance with the highest professional standards, provide, furnish, perform, and complete all necessary planning, architectural, engineering, all other design services of any type, preconstruction, procurement, permitting and support services, construction, clean-up, and all other construction services of any type, and shall provide and furnish all necessary supplies, materials, and equipment (except those to be provided by County, if any) and all necessary supervision, labor, and services required for the complete engineering, design, procurement, quality assurance, construction, and all necessary installation, Startup and testing required for a complete, operational, and fully functional Project, as further described in Document 01 11 10 (Summary of Work) and 01 11 14 (Summary of Work - Design Services, Preconstruction Activities, and Deliverables), and Design-Build Entity’s Qualifications Package (excluding any elements inconsistent with the Contract Documents and the Criteria Documents, unless modified and approved in writing by the County). Design-Build Entity’s obligation to deliver a complete, operational, and fully functional Project is coextensive with Design-Build Entity’s obligations set forth in the Contract Documents. Except with regard to any material to be provided and/or installed by County, Design-Build Entity shall fully commission and turn over a complete, operational, and fully functional Project to County. Without limiting the generality of this Agreement, Design-Build Entity shall provide the following Work and services:

- 2.1.1 Design-Build Entity shall prepare complete designs, engineering, working drawings, shop drawings, and/or engineering analysis setting forth in detail the

specifications and requirements for the purchasing, procurement, installation, operation, testing, commissioning, maintenance, and warranties of the services, materials and equipment and for the construction of the complete, operational, and fully functional Project, and shall furnish the services of all necessary supervisors, engineers, designers, draftsmen, and other personnel necessary for the preparation of those Construction Documents required for the Work, including the pertinent information for power, natural gas, water supply, and any other utilities, as required.

- 2.1.2 Design-Build Entity shall provide, install, complete as specified, and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction, Startup and testing, utilities, transportation, and other facilities and services (including any temporary materials, equipment, supplies, and facilities) necessary for the proper execution and completion of the complete, operational, and fully functional Project, including the permanent interconnection for electricity, natural gas, water supply, and any other utilities and demonstration of fully satisfactory operation of all systems and equipment.
- 2.1.3 Design-Build Entity shall supervise and direct the Work and shall furnish the services of all supervisors, forepersons, skilled and unskilled labor, and all other personnel necessary to design and construct the complete, operational, and fully functional Project. Design-Build Entity shall provide, manage, and organize such personnel as necessary to complete the Work in accordance with all requirements of the Contract Documents.
- 2.1.4 Design-Build Entity shall obtain all AHJ and private approvals, licenses, and permits required to complete the Work; provided, however, Design-Build Entity is not required to pay any charges associated with any permits except for reinspection charges or for encroachment permits for work performed in public right-of-ways. Design-Build Entity is responsible for the cost of all other items related to the Work. Design-Build Entity shall design and construct a complete, operational, and fully functional Project in full compliance with all applicable laws, codes and standards (both public and private), including, but not limited to, the standards included and warranties expressed in the Contract Documents and manufacturers' recommendations pertaining to individual items of equipment or systems.
- 2.1.5 Design-Build Entity understands and acknowledges that the design documents prepared by or on behalf of Design-Build Entity, at any stage of preparation or completion, may be subject to a Peer Review process. Design-Build Entity shall cooperate with any such Peer Review by, among other things: (i) making available all documents requested; (ii) responding promptly to any inquiries; (iii) participating in meetings, whether in person, by telephone, or by online platform with County and/or the independent third party performing the Peer Review, and (iv) contractually securing the agreement of its Subconsultants to cooperate with such reviewers and to respond to comments made by such reviewers as County deems appropriate. The obligation to cooperate includes responding in an objective and professional manner to requests for information of such reviewers and modifying or supplementing the design work product and instruments of service as may be determined by County in its reasonable discretion without additional compensation.

3. SEQUENCE OF PHASED WORK. The Work for each of the Phases shall be executed as follows:

- 3.1 Design and Preconstruction through Acceptance of Final GMP Proposal - Phase I. Design-Build Entity shall perform the services of design, pricing, and other preconstruction services

for the Project based on County's "Scope of Work" and as set forth in the Scope of Work Summary in the County's Criteria Documents. Design-Build Entity will perform such services to the level of completion required for Design-Build Entity and County to establish the Final GMP for Phase II of the Work as set forth in Paragraph 3.2 below. The Final GMP Proposal shall be developed during Phase I in an open-book process between Design-Build Entity and the County. Work by Design-Build Entity in Phase I shall include:

3.1.1 Initial Meetings, Site Planning, and Scope Development: Design-Build Entity shall meet with the County to gather all information necessary to plan the Work required by the Contract Documents.

Design-Build Entity will facilitate a validation effort in collaboration with the County and develop appropriate space planning and programming to meet the operational needs of the Project. This effort will include architectural programming, specifications, selection of equipment, product, and materials.

Programming must also consider the following elements including, but not limited to, building management systems, life-safety systems, emergency power generation, and security systems.

Design-Build Entity shall provide a conceptual cost estimate to ensure conformance with the County's estimated cost of construction and the Initial GMP and make recommendations on programming adjustments to meet the scope and budget requirements for the initial programming.

3.1.2 Concept and Plan: Design-Build Entity shall create and provide to the County by no later than the date specified in the approved Project Master Schedule (based on the document included in Design-Build Entity's Qualifications Package) an initial concept plan (the "Concept Plan"). The Concept Plan shall contain:

- i. Drawings/reports illustrating proposed floorplan for the layout and suggested locations of equipment. Design-Build Entity will prepare and submit the Concept Plan, along with a revised detailed cost estimate, to the County for approval to ensure conformance with the County's estimated cost of construction and the Initial GMP.
- ii. Design-Build Entity will also determine all required approval processes, including those of the County,, utility providers, public health department, and all other AHJs over the Work.
- iii. Design-Build Entity will submit the Concept Plan documents to the County and request County's approval.

3.1.3 Schematic Design: After County's review and approval of the Concept Plan documents, Design-Build Entity will prepare Schematic Design documents for the County's approval. Design-Build Entity shall create and provide to the County Schematic Design documents no later than the date specified in the Project Master Schedule. The Schematic Design documents shall contain:

- i. Drawings/reports illustrating proposed floorplan locations for equipment. In addition, mechanical, electrical, plumbing, and fire protection schematic-level layouts should be included as required by the Work. Basis of design regarding building management systems, life-safety systems, emergency power generation, and security system shall also be included.

- ii. Design-Build Entity will also provide an updated cost estimate at 100% schematic design, to ensure conformance with the County's estimated cost of construction and the Initial GMP. This report shall detail the steps that remain to gain full County review and approvals, as required, to proceed with the proposed construction. Design-Build Entity will submit the schematic design documents to the County and request County's approval.

3.1.4 Design Development – 100% Design Development: After County review and approval of the schematic design documents, Design-Build Entity shall continue design development to a 100% design level, including updating all required architectural, mechanical, electrical, plumbing, fire protection, and other design drawings. Design-Build Entity shall also research and resolve any unknown or unresolved utility connections, coordinate items involved in any of the trades, and verify any existing conditions. Design-Build Entity will submit the design development documents to the County for County's approval no later than the date specified in the Project Master Schedule.

3.1.5 Preconstruction Activities: (1) Preparing, verifying, updating, and providing recommendations regarding the Construction Schedule; (2) conducting Site logistic management activities; (3) identifying and scheduling long lead-time equipment and materials; (4) performing constructability analysis and design coordination; (5) performing value engineering recommendations for alternatives to construction means and methods of performing the Work as well as substitution of materials to assist in achieving the County's objectives for time of construction, construction cost, and functional performance; and (6) Subcontractor procurement/bidding, if applicable.

3.1.6 Final GMP Development: After County review and approval of the 100% Design Development documents, Design-Build Entity shall prepare a comprehensive and Final Guaranteed Maximum Price ("Final GMP" or "FGMP") Proposal, which shall include detailed cost estimates, schedule Milestones for completion of Design Deliverables and the Work, and budget planning based on the developed designs as further defined in Article 4 below.

3.2 **Remaining Design, Preconstruction, and Construction After Acceptance of Final GMP - Phase II.** Upon agreement on the Final GMP for the Work, the County, at its sole and absolute discretion, may provide a written notice to proceed for Design-Build Entity to complete the remaining design, preconstruction, and construction activities sufficient to complete and closeout the Project, consistent with the Final GMP. Upon receipt of written notice from the County to proceed, Design-Build Entity's Phase II of services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the Startup, testing, and commissioning of the Project, and the provision of warranty services, all as set forth in this Article 3.

3.2.1 Construction Documents – 100% Completion of Construction Documents: Upon approval to proceed, Design-Build Entity shall produce final Construction Documents that have incorporated all prior input, design requirements, and approvals. Design-Build Entity shall obtain final building permits from applicable AHJs.

3.2.2 Preconstruction Activities: (1) Preparing, verifying, updating, and providing recommendations regarding the Construction Schedule; (2) conducting Site logistic management activities; (3) identifying and scheduling long lead-time equipment and materials; (4) performing constructability analysis and design

coordination; (5) performing value engineering recommendations for alternatives to construction means and methods of performing the Work as well as substitution of materials to assist in achieving the County's objectives for time of construction, Construction Cost, and functional performance; and (6) Subcontractor procurement/bidding, if applicable.

- 3.2.3 **Construction:** Design-Build Entity will be responsible for construction means and methods and will be required to solicit bids from qualified Subconsultants and Subcontractors to perform the Work pursuant to Document 00 62 30 (Subconsultant/Subcontractor Procurement) and the County-approved Subconsultant/Subcontractor Procurement Plan. Design-Build Entity will not be required to self-perform any portion of the Work but may competitively bid to do so. The County will not limit to the amount of self-performance for a Design-Build Entity, so as long as all work is competitively bid in accordance with Public Contract Code.

Design-Build Entity will be responsible for procurement, permitting and support services, construction, clean-up, closeout, and all other construction services of any type, and shall provide and furnish all necessary supplies, materials, and equipment and all necessary supervision, labor, and services required for the complete construction, installation, Startup, and testing required for a complete, operational, and fully functional Project, as further described in Document 01 11 10 (Summary of Work), Document 01 11 14 (Summary of Work - Design Services, Preconstruction Activities, and Deliverables), and Design-Build Entity's Qualifications and Proposal.

- 4. INCREMENTAL FINAL GMP PROPOSALS.** Within 90 calendar days after completion of the 100% Design Development Documents for each Work Component, Design-Build Entity shall submit two (2) or more proposals to the County for the completion of the design, preconstruction, and construction, each of which shall include an incremental Final GMP for all such Component Work in accordance Design-Build Entity's Final GMP Development Plan, as approved by County. Final GMP Proposal pricing (and Direct Costs incurred and submitted for payment) will be presented to the County as "open book" pricing that describes all costs in detail and provides trade bid tabulations, labor and material quotes, and all other supporting documentation.

- 4.1 **Contents of Incremental Final GMP Proposals.** The Final GMP Proposal shall include the following:

4.1.1 The Final GMP for all Contract Work, which shall be the sum of:

- i. The estimated Cost (Direct Costs) of the Work of Phase II for all Work Components;
- ii. FIXED PERCENTAGE RATES for Indirect Costs of Construction established in Design-Build Entity's Proposal to be applied to Direct Costs of Construction;
- iii. LUMP SUM PRICE established in Design-Build Entity's Proposal to obtain the Builder's Risk Insurance coverage Specified in Document 00 73 16 (Insurance Requirements, which evidence of satisfactory Builder's Risk insurance coverage shall be provided to the County prior to execution of the Contract and within the time Specified in Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers);

- iv. LUMP SUM PRICE established in the Design-Build Entity's Proposal for (a) A/E Design & Engineering fees through County's acceptance of the Final GMP Proposal, (b) Design-Build Entity/Subcontractor fees for preconstruction services through County's acceptance of the Final GMP Proposal;
 - v. FIXED PERCENTAGE RATES established in Design-Build Entity's Proposal (to be applied to the above Direct Costs and Indirect Costs including the cost of Builder's risk insurance) as compensation for Phase II A/E Design & Engineering Fees, and Preconstruction Services, without duplicating any such fixed percentage rates applies to each incremental Final GMP;
 - vi. If applicable, any prices for alternates established under Paragraph 4.1.5. hereof accepted by the County; and
 - vii. See Paragraph 8.9 below regarding Conditions for Adjustment of Proposal Pricing.
- 4.1.2 The 100% Design Development Documents, including Drawings, Performance Specifications, Addenda, reports, and the County-approved 100% Design Development Documents will form the basis of the Final GMP and clearly set forth the Work required in the subsequent phase of design completion, preconstruction, construction, and closeout.
- 4.1.3 A list of assumptions and clarifications made by Design-Build Entity in the preparation of the Final GMP Proposal, which list is intended to supplement the information contained in the Criteria Documents and 100% Design Development documents.
- 4.1.4 The scheduled Substantial Completion date upon which the Final GMP Proposal is based, to the extent said date has not already been established hereof, a schedule upon which the scheduled Substantial Completion date is based, and a Project Master Schedule for the Work.
- 4.1.5 A statement of additional Work, which may be performed but which are not included in the Final GMP Proposal, and which, if performed, shall be the basis for an increase in the Final GMP and/or Contract Time.
- 4.1.6 A list of permits and Regulatory Agency and AHJ approvals required for construction. Design-Build Entity is responsible for identifying all permits and agency approvals required.
- 4.1.7 An updated list of retained and proposed Key Personnel, Subcontractors, Subconsultants, and suppliers.
- 4.1.8 A statement of additional services included, if any.
- 4.1.9 A statement of any Work to be self-performed by Design-Build Entity.
- 4.1.10 A statement identifying all patented or copyrighted materials, methods, or systems selected by Design-Build Entity to be incorporated in the Work that are likely to require the payment of royalties or license fees.

- 4.1.11 Each incremental Final GMP Proposal shall remain open for one hundred twenty (120) days unless mutually agreed otherwise.
- 4.1.12 Such other documentation and narrative descriptions detailing the basis of the Final GMP as the County may require.
- 4.2 **Meeting Regarding Incremental Final GMP Proposals.** After submission of an incremental Final GMP Proposal, Design-Build Entity and County shall meet to review and discuss the Final GMP Proposal. If County has any comments regarding the Final GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, County shall promptly give written notice to Design-Build Entity of such comments or findings. If appropriate, Design-Build Entity shall, upon receipt of County's notice, make appropriate adjustments to the Final GMP Proposal.
- 4.3 **Acceptance of Final GMP Proposal.** If and as County accepts each incremental Final GMP Proposal, as may be amended by Design-Build Entity, the County, at its sole and absolute discretion, will issue a written Notice to Proceed with each such Component of Phase II Work; Design-Build Entity shall perform such Phase II Work, all as further described in the incremental Final GMP Proposal. Upon County's acceptance of the Final GMP Proposal for the remaining Work of the Project, a Change Order will be issued to establish the Final GMP and Contract Sum. As set forth in Section 8 below, any unused portion of the Initial GMP, upon acceptance of the Final GMP, shall accrue to the Project Contingency. Any unused portion of the Final GMP shall be considered cost savings, which accrue solely to the County, and shall be returned to the County.
- 4.4 **Failure to Accept Incremental Final GMP Proposals.** If County rejects any of the Design-Build Entity's incremental Final GMP Proposal or fails to notify Design-Build Entity in writing on or before the date specified in such Final GMP Proposal that it accepts the Final GMP Proposal, the Final GMP Proposal shall be deemed withdrawn and of no effect. In such event, County and Design-Build Entity shall meet and confer as to how the Project will proceed, with County having the following options:
- 4.4.1 County may suggest modifications to such Final GMP Proposal, whereupon if such modifications are accepted in writing by Design-Build Entity, such Final GMP Proposal shall be deemed accepted, and the parties shall proceed in accordance with Paragraph 3.2 above.
- 4.4.2 County may terminate Design-Build Entity's performance of this Agreement for convenience in accordance with the "Termination for Convenience" provisions in Document 00 72 53 (General Conditions) and enter into a contract with any other person or entity, including any qualified Design-Build Entity(ies), Subcontractor(s), Subconsultant(s) and supplier(s) for the performance of the Work, or any portion thereof in accordance with Legal Requirements. County shall accept assignment of such Design-Build Entity subcontracts as it chooses, in accordance with Paragraph 13.10 of Document 00 72 53 (General Conditions), and Design-Build Entity shall only be entitled to compensation for the undisputed earned value of Phase I to complete the Design and Preconstruction through acceptance of Final GMP. Design-Build Entity shall not be entitled to the payment provided in Paragraph 8.2 below. County owns all instruments of service, work product, and Design Deliverables produced to the point of termination. Design-Build Entity shall be deemed to have granted the County a license to use these documents for completion of, or alternations, additions, renovations, or other modifications to, the Project, and these documents must be turned over to the County in their original file format.

5. AUTHORIZATION TO PERFORM WORK BY PHASE.

- 5.1 Design-Build Entity shall not commence Work on any Phase and shall not commence construction of any Work Component until County issues a Notice to Proceed for that Component or Phase. County will not be obligated to compensate Design-Build Entity for Work performed prior to County's issuance of each such Notice to Proceed.
- 5.2 Design-Build Entity understands that as of the date of this Agreement, Work for any design after 100% Design Development, prior to acceptance of any incremental Final GMP Proposal, is not yet authorized by County. County may, in its sole discretion, authorize Design-Build Entity to perform any Work Component after approval of an incremental Final GMP Proposal by issuing a written Notice to Proceed with a Work Component or Phase II to Design-Build Entity.
- 5.3 County's option to elect to proceed with Work after 100% Design Development is independent of its "Termination for Convenience" rights as set forth in Document 00 72 53 (General Conditions). If County elects not to proceed with any Work Component after 100% Design Development, Design-Build Entity's right of recovery is limited to the portion of the Contract Sum only pertaining to Phase I that has been satisfactorily completed, and any approved Component Work of Phase II as determined by the County.

6. COUNTY'S PROJECT MANAGER AND REPRESENTATIVES.

- 6.1 County may delegate all or part of its rights, responsibilities, and duties under this Agreement to a County Project Manager or other representative. County shall inform Design-Build Entity in writing of any such delegation and the extent of its representative's authority.
- 6.2 All notices or demands to County under the Contract Documents shall be to County's Capital Program, Project Manager:

Nivi Gupta, Senior Project Manager
County of Alameda
General Services Agency, Capital Programs
1401 Lakeside Drive, Suite 10th Floor
Oakland, CA 94612
Nivi.Gupta@acgov.org

or to such other person(s) and address(es) as County shall provide to Design-Build Entity.

7. CONTRACT TIME AND LIQUIDATED DAMAGES. The Contract Time shall be organized by Phase as follows:

- 7.1 Design-Build Entity shall commence on the date specified in the Notice to Proceed for Phase I and shall complete Phase I of Work in accordance with the County-approved Project Master Schedule.
- 7.2 If County accepts Design-Build Entity's Final GMP Proposal (as set forth in Article 3 above) and elects to proceed with a Component of Phase II, County will issue Notice to Proceed for such Phase II Work based upon acceptance of the incremental Final GMP.
- 7.3 Design-Build Entity shall complete the entire Work of the Project within the duration set in this Article 7 and beginning with the date in the Notice to Proceed that specifies the commencement of the date Design-Build Entity must achieve Substantial Completion of

the entire Work. County reserves the right to modify or alter the date the Work is to commence at any time.

- 7.4 Design-Build Entity shall obtain all required AHJ approvals related to the Project. Design-Build Entity accepts all time-related risks and all cost-related risks relating to those approvals except as is provided in Paragraphs 15.6 and 15.7 of Document 00 72 53 (General Conditions), and Paragraph 1.3.7 of Document 01 32 16 (Schedules and Reports).
- 7.5 Design-Build Entity acknowledges that time is of the essence with respect to the Substantial Completion of the Work and the performance of this Agreement and that the County will be damaged by any delay in completing any of the Phases of the Project. Therefore, Design-Build Entity accepts the following completion obligations:
- 7.5.1 Design-Build Entity shall achieve Substantial Completion of the entire Work no later than **730 calendar days** after the commencement date set forth in the Notice to Proceed for Phase I – Design and Preconstruction Services through acceptance of Final GMP. The date for Substantial Completion may be superseded upon acceptance of the Final GMP Proposal, in its sole discretion, if approved by the County by Contract Modification.
- 7.5.2 Design-Build Entity shall achieve Final Completion of the Project no later than **thirty (45) calendar days** after the date by which Design-Build Entity achieves Substantial Completion (“Contract Time”).
- 7.5.3 Following the issuance by the AHJ permitting agency of a permit allowing Design-Build Entity to commence construction of the Project, Design-Build Entity shall update the Project Master Schedule in accordance with Document 01 32 16 (Schedules and Reports). The County is under no obligation to accept an updated Project Master Schedule that shows Design-Build Entity achieving Substantial Completion or Final Completion of the Project later than the durations and Contract Time specified in Paragraphs 7.5.1 and 7.5.2 of this Document 00 52 00 (Agreement).
- 7.5.4 In addition to timely achieving Substantial Completion and Final Completion, Design-Build Entity shall fully cooperate with the County so that the County may obtain all necessary Regulatory Agency approvals required to operate the Project.
- 7.6 To facilitate Design-Build Entity performing its Final Completion obligations as described in the Contract Documents, Design-Build Entity acknowledges and accepts the Regulatory Agency’s review durations for incremental construction permit applications described in Document 00 73 13 (Special Conditions). Design-Build Entity’s Project Master Schedule, Design Schedule, and Construction Schedule shall reflect durations for permit reviews and work sequencing. If Design-Build Entity fails to provide the Regulatory Agency with all documents necessary for the Regulatory Agency to review an incremental construction permit application within the time period stated above, (a) the Contract Time shall not be extended, (b) the Final GMP shall not be adjusted, and (c) Design-Build Entity shall accelerate the recovery of time to the critical path of the Project without compensation. County will manage its own decision-making process to timely review and approve Construction Documents within Design-Build Entity’s planned durations and will make its reasonable best efforts to facilitate the Regulatory Agency’s timely review of construction permit applications within Design-Build Entity’s planned durations.
- 7.7 Liquidated Damages. The County and Design-Build Entity recognize that time is of the essence in this Agreement and that the County may suffer financial loss in the form of additional contract administration expenses (including project management and

consultants' fees and expenses) and delay and loss of public use if the Work is not completed within the time durations specified in Paragraph 7.5 above, plus any extensions thereof allowed in accordance with the Contract Documents. Design-Build Entity and County agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by County because of a delay in completion of the Work.

Accordingly, County and Design-Build Entity agree that Design-Build Entity shall pay County the following liquidated damages that apply separately and cumulatively:

7.7.1 If Design-Build Entity fails to achieve Substantial Completion of the entire Work and/or Final Completion of the Project within the time durations specified in Paragraph 7.5 above in accordance with the Contract Documents, Design-Build Entity shall pay County as liquidated damages, and not as a penalty, the following sums of money per day for each calendar day the actual time of Design-Build Entity's performance exceeds the authorized durations for construction of the Project as follows:

7.7.1.1 Design-Build Entity shall pay County four thousand dollars (\$4,000) per calendar day as liquidated damages for every day by which Substantial Completion exceeds duration established by the Notice to Proceed and specified in Paragraph 7.5.1 above.

7.7.1.2 If Design-Build Entity fails to achieve Final Completion of the Project within forty-five (45) calendar days after the date by which Design-Build Entity achieves Substantial Completion, then Design-Build Entity shall pay County one thousand five hundred dollars (\$1,500) per calendar day as liquidated damages for every calendar day by which Final Completion of any portion of the Project exceeds this time period.

7.8 Liquidated damages for delay shall cover and be in lieu of the actual damages suffered by County as a result of delay. Liquidated damages are intended to compensate County for damages it incurs as a result of delay, but do not cover the cost of completion of the Work or any other damages not arising from delay. These liquidated damages shall be the County's sole remedy for recovery of damages due to delay in the Work, provided that this provision shall not limit any right or remedy of County in the event of any default of Design-Build Entity other than failing to achieve Substantial Completion within the established duration and Final Completion of the Work within the Contract Time.

7.9 Subject to the liquidated damages measures in the Contract Documents, neither Design-Build Entity nor County shall have any liability for consequential damages arising out of the completion of the Work under the Contract Documents, except to the extent that such consequential damages arise from personal injury, property damage, economic loss, or defective work, and are covered by any insurance maintained by County, Design-Build Entity, or any Subcontractor, Supplier, design professional, or any other party involved on the Project.

8. CONTRACT SUM AND BASIS FOR PAYMENT.

8.1 **Contract Sum/Guaranteed Maximum Price ("GMP").** The Contract Sum is the total amount payable by County to Design-Build Entity for performance of Phase I - design and preconstruction through acceptance of Final GMP Proposal, which will be compensated on a lump sum basis, and for the Phase II - remaining design, preconstruction, and construction after Final GMP Proposal acceptance, performed upon County's incremental written authorizations, which shall be compensated based on Direct Costs of the Work, Indirect Costs of the Work, and FIXED PERCENTAGE RATES applied to the above Direct Costs,

8.3.1.2 Design-Build Entity/Subcontractor Fees for Preconstruction Services through acceptance of Final GMP Proposal: \$ _____

8.3.2 Builder's Risk Insurance Premium

<u>DESCRIPTION</u>	<u>TOTAL</u>
BUILDER'S RISK INSURANCE PREMIUM	
Design-Build Entity's price to obtain Builder's Risk "All Risk": insurance to indemnify the County for all damage to the Work for the risks Specified in Paragraph 7 of Document 00 73 16 (Insurance Requirements), which evidence of satisfactory Builder's Risk insurance coverage shall be provided to the County prior to execution of the Contract and within the time specified in Document 00 21 16 (Request for Qualifications and Proposals- Instructions to Proposers).	\$ _____

8.4 **Incremental Final GMP.** During Phase II, Design-Build Entity shall issue an incremental Final GMP for Components of the Work, which shall culminate to a Final GMP for the entire Work, which Design-Build Entity shall guarantee will not exceed the amount approved by the County. The Final GMP for the Work of the Project is comprised of the following price elements:

1. Direct Construction Costs inclusive of a Project Contingency (in accordance with Paragraph 8.6 below);
2. Indirect Costs for: (1) Design-Build Entity's General Conditions Costs, (2) Construction Overhead and Profit, (3) Payment and Performance Bond Premiums, and (4) Insurance Policy Premiums, all as described in Document 00 21 16 (Request for Qualifications and Proposal – Instructions to Proposers), at the Fixed Percentage Rates for Indirect Costs listed below, which Fixed Percentage Rates for Indirect Costs shall be applied to Design-Build Entity's actual Direct Construction Costs of the Work;
3. Design-Build Entity's FIXED PERCENTAGE RATES applied to the above Direct Costs, Indirect Costs, and the cost of Builder's risk insurance
4. Allowances in accordance with Paragraph 8.5 below; and
5. Alternates, if any, accepted by County.

Design-Build Entity shall be solely responsible for any amounts that exceed the Final GMP and County shall have no obligation to reimburse Design-Build Entity for any amounts incurred by Design-Build Entity that may exceed the Final GMP. The Final GMP and documents used as a basis for the Final GMP shall be approved in writing by the County.

Design-Build Entity will guarantee specific line item GMPs in Design-Build Entity's Incremental Final GMP Proposals for each Work Component, as provided in Paragraph 8.6.1 below. t. Design-Build Entity agrees, however, that it will be responsible for paying all A/E Design & Engineering Fees, Direct Costs and Indirect Costs of completing the Work which exceed the Final GMP, as adjusted in accordance with the Contract Documents. Any unused portion of the Initial GMP, upon acceptance of the Final GMP, shall accrue to the Project Contingency. Any unused portion of the Final GMP upon Final Completion of the Work, shall be considered cost savings, which accrue solely to the County and shall be returned to the County.

8.5 **Phase II Payments.** Upon acceptance of each incremental Final GMP for a Component of the Construction Work, County shall pay Design-Build Entity for completion of each Component in accordance with the Contract Documents, the Final GMP comprised of :

8.5.1. Direct Costs of the Work inclusive of a Project Contingency (in accordance with Paragraph 8.6 below);

8.5.2 Indirect Construction Costs applied to Direct Costs of the Work in the following fixed percentage rates:

<u>DESCRIPTION</u>	<u>FIXED PERCENTAGE RATES</u>
CONSTRUCTION SERVICES FIXED PERCENTAGES FOR INDIRECT COSTS	
a. General Conditions Costs	_____ %
b. Construction Overhead and Profit	_____ %
c. Payment and Performance Bond Premiums	_____ %
d. Insurance Policy Premiums for all insurance in Document 00 73 16 (Insurance Requirements) EXCLUDING Design-Build Entity's price to obtain Builder's Risk "All Risk" insurance to indemnify the County for all damage to the Work for the risks Specified in Paragraph 7 of Document 00 73 16 (Insurance Requirements), which evidence of satisfactory Builder's Risk insurance coverage shall be provided to the County prior to execution of the Contract and within the time specified in Document 00 21 16 (Request for Qualifications and Proposal – Instructions to Proposers) and excluding the amount set forth in n Document 00 42 53 (Proposal Form).	_____ %

8.5.3 Fixed Percentage Rates for Phase II Remaining Design, Preconstruction Services, & Construction Administration through Closeout

8.5.3.1 A/E Design & Engineering Fees – Acceptance of Final GMP through Construction Administration and Closeout ___%;

8.5.3.2 Design-Build Entity/Subcontractor Preconstruction Fees – Acceptance of Final GMP through Construction Administration and Closeout __%.

8.6 Allowance Items and Allowance Values.

- 8.6.1 Any and all Design-Build Entity-requested Allowance items along with their corresponding Allowance line item values shall be set forth in each Final GMP Proposal for a Component of the Construction Work and upon County acceptance shall be included in the Contract Sum. It is anticipated that all of the County-Specified Allowances included in Document 00 42 53 (Proposal Form) and summarized in in Document 01 21 00 (Allowances) as detailed in the budget cost plan included in the Criteria Documents, will be converted to line item GMP dollar values in Design-Build Entity's Incremental Final GMP Proposals for each to applicable Work Component. Any excess County-Specified Allowance amounts for Work Components will be transferred to the Project Contingency line item or may be transferred to another Work line item in the Schedule of Values with County's consent for the benefit of the Project.
- 8.6.2 Design-Build Entity and County shall work together to review all the Allowance items and Allowance values based on design information available to determine that the Allowance values constitute reasonable estimates for the Allowance items. Design-Build Entity and County will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance values.
- 8.6.3 No Construction Work shall be performed on any Allowance item and no funds authorized for Allowance Construction Work will be released without Design-Build Entity first obtaining in writing advanced authorization to proceed from County.
- 8.6.4 If the final actual costs incurred by Design-Build Entity are more or less than the Allowance dollar value other than for County-Specified Allowances, which are addressed Paragraph in 8.6.1 above, the Final GMP Contract Sum shall be adjusted accordingly by Change Order.

8.7 Project Contingency.

- 8.7.1 Permissible Uses of Project Contingency. Project Contingency may only be used to pay for the following:
 - 8.7.1.1.1 Construction Work shown or inferred from the Construction Documents but missing from Bid Packages.
 - 8.7.1.1.2 Expenditures directed by Design-Build Entity and agreed to by County, in its sole discretion, for the benefit of the Project.
 - 8.7.1.1.3 Not Used.
 - 8.7.1.1.4 Overages on Design-Build Entity-requested Allowances that were specifically approved by County.

8.7.1.1.5 Acceleration of the Construction Schedule.

8.7.2 Prohibited Uses of Project Contingency. Project Contingency shall not be used to pay for:

8.7.2.1.1 Design Services, Preconstruction Services, or Construction Administration Services.

8.7.2.1.2 Additional or Extended General Conditions Costs, including Project management staff for Construction Work.

8.7.2.1.3 Weather protection for Work in place and stored materials.

8.7.2.1.4 Insurance deductibles and self-insured retention payments.

8.7.2.1.5 Any Work specified in subcontracts with Subcontractors and Subconsultants of any tier.

8.7.2.1.6 Replacing, correcting, or otherwise remedying Defective Work as required by the Contract Documents.

8.7.2.1.7 Any conflict, ambiguity, increase in costs, damages, or expenses arising out of errors or omissions in the Construction Documents.

8.7.2.1.8 Design Services, Preconstruction Services, or Construction Administration Services.

8.7.2.1.9 Additional or Extended General Conditions Costs including Project management staff for construction Work.

8.7.3 Project Contingency Use and Approval Process

8.7.3.1 Design-Build Entity shall provide County with prior written notice of its intent to use any of the Project Contingency. The notice shall be provided reasonably far in advance of the proposed use, thereby enabling County to determine whether the use complies with the Contract Documents. The written notice shall include:

8.7.3.1.1 A detailed description of the portion of the Construction Work to which the request pertains. The description must demonstrate that the Construction Work falls within a permissible use(s) of Project Contingency as provided for herein; and

8.7.3.1.2 Substantiation for the Direct Cost of Work arising from the proposed use of Project Contingency in the same manner Design-Build Entity would substantiate a Cost Proposal; provided, however, County may waive this requirement and instead direct that Design-Build Entity perform the Construction Work on a time and material basis.

8.8 Cost Escalation.

- 8.8.1 In the event cost escalation increases by more than the rates for escalation mark-ups for portions of the Work Specified in the Budget Cost Plan included in the County's Criteria Documents, as determined by the DGS California Construction Cost Index ("CCCI"), between the date of the Agreement and the date of installation or purchase by the Design-Build Entity, the Contract Sum shall be equitable adjusted by the amount that exceeds the rate specified in the budget cost plan, to compensate the Design-Build Entity for the increased cost.
- 8.8.2 In the event cost escalation is less than the rates for escalation mark-ups for portions of the Work Specified in the Budget Cost Plan included in the County's Criteria Documents, as determined by the DGS CCCI, between the date of the Agreement and the date of installation or purchase by the Design-Build Entity, the Contract Sum shall be equitable adjusted by the amount that is less than the rate specified in the budget cost plan, to provide a credit to County for the decreased cost.
- 8.8.3 Any equitable adjustments to the Contract Sum arising from the above cost increases or decreases shall be made by Change Order in accordance with the procedures of the Contract Documents.

8.9 Conditions for Adjustment of Proposal Pricing. Design-Build Entity agrees that: the Fixed Percentage Rates For Indirect Costs for "General Conditions Costs" and Construction Overhead and Profit, the lump sum amounts for Phase I Design & Preconstruction Services, and fixed percentage rates for Phase II Remaining Design, Preconstruction Services, & Construction Administration (without duplication of General Conditions Costs) through Closeout will not increase or decrease due to changes in the Direct Costs of the Work occurring during Phase I or Phase II, unless such increases or decreases result from unknown Site conditions inconsistent with the information included in the Criteria Documents, or significant County-directed changes to the Criteria Documents or to County-approved and permitted Construction Documents. Any changes to the foregoing Fixed Percentage Rates and lump sum amounts will occur only pursuant to Change Orders issued in accordance with the Contract Documents. See also Paragraph 1.3.1 of Document 01 26 00 (Contract Modification Procedures).

8.10 Costs and Taxes Included in Contract Sum. The Contract Sum is all inclusive and includes all costs and expenses of the Work, including profit, markups, overhead and Allowances; all federal, state, and local taxes on materials and equipment; and labor furnished by Design-Build Entity, its Subcontractors, Subconsultants, architects, engineers, and vendors or otherwise arising out of Design-Build Entity's performance of the Work, including any increases in any such taxes during the term of this Agreement; and any duties, fees, and royalties imposed with respect to any materials and equipment, labor or services, except as otherwise provided in Paragraph 13.7 of Document 00 72 53 (General Conditions). The taxes covered hereby include (but are not limited to) occupational, sales, use, excise, unemployment, FICA, and income taxes, customs, duties, and any and all other taxes on any item or service that is part of the Work, whether such taxes are normally included in the price of such item or service or are normally stated separately. Notwithstanding the foregoing, each party shall bear such state or local inventory, real property, personal property, or fixtures taxes as may be properly assessed against it by applicable taxing authorities.

9. DESIGN-BUILD ENTITY'S REPRESENTATIONS AND WARRANTIES. In order to induce County to enter into this Agreement, Design-Build Entity represents and warrants to County the following:

- 9.1 Design-Build Entity has visited the Project Site, and made an inspection of the Site, and has examined the nature and extent of the Work, Site, locality, actual conditions, as-built conditions, labor availability, and all local conditions and federal, state, and local laws and

regulations that in any manner may affect cost, progress, performance, or furnishing of Work or which relate to any aspect of the design and the means, methods, techniques, sequences, or procedures of construction to be employed by Design-Build Entity and safety precautions and programs incident thereto.

- 9.2 Design-Build Entity has examined all reports of exploration and tests of subsurface conditions, as-built drawings, and drawings or reports available for design and construction purposes of physical conditions that have been provided by the County, including those which are identified in Documents 00 31 32 (Geotechnical Data and Existing Conditions), or which may be apparent at the Site and accepts the criteria set forth in these documents and Document 00 72 53 (General Conditions) to the extent of the information contained in these documents upon which Design-Build Entity is entitled to rely.
- 9.3 After execution of this Agreement, Design-Build Entity will conduct or obtain any additional examinations, investigations, explorations, tests, reports, and studies, including, but not limited to, geotechnical investigations upon which the design will be based that pertain to the surface and subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site that Design-Build Entity considers necessary for the performance or furnishing of Work for the Final GMP, within the Contract Time and in accordance with the terms and conditions of the Contract Documents.
- 9.4 Design-Build Entity has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
- 9.5 Design-Build Entity has given County prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it discovered prior to executing and delivering this Agreement in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by County or otherwise is acceptable to Design-Build Entity.
- 9.6 Design-Build Entity is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or organization and is duly qualified to conduct business in the State of California.
- 9.7 The execution, delivery, and performance of this Agreement, the other Contract Documents, and the Work to be performed herein (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not violate or create a default under any instrument, agreement, order, or decree binding on Design-Build Entity.
- 9.8 Design-Build Entity will use the qualified Subcontractors, who were listed in response to Document 00 21 16 (Request for Qualifications and Proposal – Instructions to Proposers), or thereafter approved by County pursuant to Subcontractor procurement/bidding procedures established in the Contract Documents including, without limitation, Document 00 62 30 (Subconsultant/Subcontractor Procurement), to perform the Work. Consistent with Public Contract Code § 4100 et seq., Design-Build Entity shall not substitute a different Subcontractor or supplier in place of any of those listed in Design-Build Entity's Qualifications and Proposal Package, including those required by County's Document 00 21 16 (Request for Qualifications and Proposal – Instructions to Proposers) as listed below in this Paragraph 9.8, nor shall any Subcontractor assign or transfer, subcontract, or permit the same to be performed by any other Subcontractor without County's prior written approval. Design-Build Entity shall provide County with a complete and updated list of Subcontractors as they become known on the Project and shall comply with the requirements of Public Contract Code § 22185.6 in awarding subcontracts.

- 10.1.5 Design-Build Entity's Qualifications and Proposal Package and submissions required by the RFQ, excluding any provisions inconsistent with the Contract Documents)
 - 10.1.6 Completed Designated Subcontractors List (Document 00 43 36)
 - 10.1.7 Completed and Executed Design-Build Entity Registration and Safety Experience Form (Document 00 45 10)
 - 10.1.8 Completed and Executed Design-Build Entity Certifications (Document 00 45 40)
 - 10.1.9 Notice of Award (Document 00 51 10)
 - 10.1.10 Agreement (Document 00 52 00)
 - 10.1.11 Notice to Proceed (Document 00 55 00)
 - 10.1.12 Performance Bond (Document 00 61 13.13)
 - 10.1.13 Payment Bond (Document 00 61 13.16)
 - 10.1.14 Escrow Agreement for Security Deposits In Lieu of Retention (Document 00 54 28)
 - 10.1.15 County-Approved Subconsultant/Subcontractor Procurement (Document 00 62 30)
 - 10.1.16 Agreement and Release of Any and All Claims (Document 00 65 19.13)
 - 10.1.17 Project Warranty and Correction Guarantee (Document 00 65 36)
 - 10.1.18 General Conditions (Document 00 72 53)
 - 10.1.19 Special Conditions (Document 00 73 13)
 - 10.1.20 Insurance Requirements (Document 00 73 16)
 - 10.1.21 Project Stabilization/Community Benefits Agreement (Document 00 73 49)
 - 10.1.22 Project Manual (All Division 00 through 01 Documents) and exhibits including the Criteria Documents
- 10.2 The intent of the Contract Documents is to include all necessary criteria to establish the process, scope, and quality for completion of the Work by Design-Build Entity. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by Design-Build Entity shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.
- 10.3 Any conflict between or among Contract Documents shall be resolved pursuant to Paragraph 5.8 (Precedence of Documents) of Document 00 72 53 (General Conditions).
- 10.4 Construction Documents produced by Design-Build Entity that set forth the obligations of Design-Build Entity or its Subcontractor are an instrument for fulfilling the requirements of this Agreement as defined in this Article 10 (Contract Documents), and do not replace them.
- 10.5 There are no Contract Documents other than those listed above in Paragraph 10.1 of this Agreement. For the purpose of clarity and without in any way limiting the foregoing sentence, Documents 00 31 32 (Geotechnical Data and Existing Conditions) and the information supplied through them are not Contract Documents. The Contract Documents may only be amended, modified, or supplemented as is provided for in Document 00 72 53 (General Conditions).

11. MISCELLANEOUS.

- 11.1 Capitalized terms used in this Agreement and not defined herein have the meaning given in Document 00 72 53 (General Conditions), and if not defined therein, as defined in Document 01 42 00 (References and Definitions), and if not defined therein, as defined in the Contract Documents in which the term first appears.
- 11.2 It is understood and agreed that in no instance is any person signing this Agreement for or on behalf of County or acting as an employee or representative of County liable pursuant to this Agreement or upon any warranty of authority, or otherwise, and it is further

understood and agreed that liability of County is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

- 11.3 Design-Build Entity shall not assign any portion of the Contract Documents but may subcontract portions of the Work only in compliance with the subcontractor listing requirements of Public Contracting Code § 4100 et seq.
- 11.4 The Initial GMP includes all Direct Costs and Indirect Costs necessary to complete the Work.
- 11.5 In entering into a public contract or a subcontract to supply goods, services, or materials pursuant to a public contract, Design-Build Entity or subcontractor irrevocably 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. § 15) and under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the County renders final payment to Design-Build Entity, without further acknowledgment by the parties.
- 11.6 Pursuant to Labor Code § 1773, the Director of the California State Department of Industrial Relations has ascertained the general prevailing rates of per diem wages and rates for holiday and overtime work in the locality in which the Project is to be performed for each craft, classification, or type of worker needed to execute this Agreement and the Work, and copies of such rates can be found on the DIR website: <https://www.dir.ca.gov/oprl/dprewagedetermination.htm>, and are incorporated herein by reference, and shall be made available to any interested party on request. Pursuant to Labor Code § 1861, Design-Build Entity shall execute and file with County a certification that it is aware of the provisions of Labor Code § 3700, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Design-Build Entity shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 11.7 Should any part, term, or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void, or unenforceable, all remaining parts, terms, and provisions shall remain in full force and effect and shall in no way be invalidated, impaired, or affected thereby. If the provisions of any law causing such invalidity, illegality, or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- 11.8 This Agreement shall be deemed to have been entered into in the County of Alameda and shall be governed in all respects by California law (excluding conflicts of laws).
- 11.9 Design-Build Entity accepts the claims procedures established by Article 12 (Claims by Design-Build Entity) of Document 00 72 53 (General Conditions) and agrees that the provisions of Article 12 (Claims by Design-Build Entity) constitute a claims procedure by agreement under Government Code § 930.2 and Government Code §§ 930 through 930.6. Design-Build Entity shall bear all costs incurred in the preparation and submission of a Claim.

- 11.10 County shall have the right to timely and fully review and approve all Phases of Design-Build Entity's design including, but not limited to, drawings, specifications, shop drawings, samples, and submittals, prior to submittal for any permit approval or deferred approval, as specified in the Contract Documents within the review durations published in Design-Build Entity's approved Design Schedule, or in the absence of an approved Design Schedule, within the review durations published in the schedule in Document 01 12 16 (Work Sequence). Such review, approval, and other action shall not relieve Design-Build Entity of its responsibility for a complete design complying with the requirements of the Contract Documents, but rather, such review and approval shall be in furtherance of County's monitoring and accepting the design as developed and issued by Design-Build Entity, consistent with these Contract Documents. Design-Build Entity's responsibility to design and construct the Project in conformance with the Contract Documents is absolute.
- 11.11 The Contract provisions relating to any obligation to provide insurance or indemnity, any waiver, warranty, guarantee or representation, any County right to Subcontractor or Subconsultant assignment, joint or direct payment, or audit right given by the Design-Build Entity to County, the claims and dispute resolution provisions, and all other provisions of the Contract Documents, which by their nature should survive termination of the Contract and completion of the Work, shall survive termination of the Contract and completion of the Work and shall be binding upon Design-Build Entity and County until any action thereunder is barred according to terms in the Contract Documents or by the applicable statute of limitations or statute of repose.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first mentioned above.

County

COUNTY OF ALAMEDA

Approved as to form:

By: _____

By: _____
County Counsel

Design-Build Entity

[DESIGN-BUILD ENTITY]

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

Design-Build Entity: For corporations and limited liability companies, the Agreement must be signed by two officers. The first signature must be that of the chairman of the board, president or vice-president; the second signature must be that of the secretary, assistant secretary, chief financial officer or assistant treasurer. (Civ. Code, Sec. 1190 and Corps. Code, Sec. 313.) The acknowledgment below must be signed by a Notary Public.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

)

County of _____)

On _____, before me, _____,
Notary Public, personally appeared _____
(insert name(s) and title(s) of the officer(s) signing on behalf of the Consultant), who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

(Notary's Seal)

Signature

END OF DOCUMENT

DOCUMENT 00 54 27

ESCROW BID DOCUMENTS

1. REQUIREMENTS FOR ESCROW BID DOCUMENTS.

- 1.1 The successful Proposer shall submit, within the time period established in Document 00 51 10 (Notice of Award), a set of all then existing Escrow Bid Documents defined below and **upon County's acceptance of the Final Guaranteed Maximum Price ("Final GMP") Proposal, in its sole discretion, and until award of all Subcontractor Bid Packages is concluded, shall subsequently submit within ten (10) Days of their preparation or receipt all Escrow Bid Documents subsequently prepared or received by Proposer.** The Escrow Bid Documents will be examined by County and will be used only for the resolution of change orders and claims disputes.
- 1.2 The submission of the Escrow Bid Documents, as with the bonds and insurance documents required and other Contract award submittals, is considered an essential part of the Contract award.
- 1.3 If, at any time, the above required information is not timely submitted and approved as required, Proposer agrees that County may, in addition to any other right under the Contract Documents, withhold from the Proposer for each set of Escrow Bid Documents not timely submitted the sum of \$50,000 in Contract funds otherwise due until the above required information is submitted, at which time the \$50,000 shall be released to Proposer.
- 1.4 The Escrow Bid Documents shall be submitted in person by an authorized representative of the Proposer to County.

2. SCOPE OF ESCROW BID DOCUMENTS.

- 2.1 Proposer shall submit one (1) copy of all estimates and supporting Subconsultant and Subcontractor quotes received or generated by Proposer in preparation of its Qualifications and Proposal, **and such additional prices determined following submission of its Qualifications and Proposal as the scope of the Work is defined through completion of design and award of Bid Packages,** as specified in Articles 5 (Format and Contents of Escrow Bid Documents) and 6 (Submittal of Escrow Bid Documents) below. This material is hereinafter referred to as "Escrow Bid Documents." The Escrow Bid Documents shall be submitted for both the design and the construction activities and shall relate to each contract entered into and/or Bid Package issued by Proposer. The Escrow Bid Documents will be held in escrow until final Contract payment and the final resolution of all claims and disputes arising out of or relating to the Work or the Contract.
- 2.2 Proposer agrees that the Escrow Bid Documents constitute **all written information used in the preparation of its Initial Guaranteed Maximum Price ("Initial GMP"), the Final GMP, and any adjustments to the Final GMP that occur through award of the final Bid Package,** and that no other written Final GMP preparation information shall be considered in resolving disputes or claims. Proposer also agrees that nothing in the Escrow Bid Documents shall change or modify the terms or conditions of the Contract Documents.

3. OWNERSHIP OF ESCROW BID DOCUMENTS.

- 3.1 The Escrow Bid Documents are, and shall always remain, the property of Proposer, subject to joint review by County and Proposer, as provided herein.
 - 3.2 County agrees that Escrow Bid Documents may: constitute trade secrets; not be known outside Proposer's business; be known only to a limited extent and only by a limited number of employees of Proposer; be safeguarded while in Proposer's possession; be extremely valuable to Proposer; and be extremely valuable to Proposer's competitors by virtue of it reflecting Proposer's contemplated techniques of construction. County agrees to safeguard the Escrow Bid Documents, and all information contained therein, against disclosure to the fullest extent permitted by law, consistent with County's full and complete use of this information to resolve disputes with the Proposer. Should the use of this information be necessary to resolve disputes, County will stipulate the terms of a reasonable protective order.
4. Escrow Bid Documents will be used in the determination of price adjustments and Change Orders and in the resolution of disputes and claims.
 5. **FORMAT AND CONTENTS OF ESCROW BID DOCUMENTS.**
 - 5.1 Proposer may submit Escrow Bid Documents in their usual cost estimating format; a standard format is not required. The Escrow Bid Documents shall be submitted in the English language.
 - 5.2 Escrow Bid Documents must clearly itemize the estimated costs of performing each item of the Work, separating Work items into sub-items as required to present a detailed cost estimate and allow a detailed cost review. The Escrow Bid Documents shall include all designer, engineer, architect, or subcontractor bids or quotes, supplier bids or quotes, quantity takeoffs, crews, equipment, calculations of rates of production and progress, copies of quotes from subcontractors and suppliers, and memoranda, narratives, add/deduct sheets, and all other information used by the Proposer to arrive at the Final GMP for the Contract. Estimated costs should be broken down into Proposer's usual estimate categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, and subcontract costs as appropriate. Plant, equipment, and indirect costs should be detailed in the Proposer's usual format. The Proposer's allocation of indirect costs, contingencies, markup, and other items to each work item shall be identified.
 - 5.3 All costs shall be identified. For work items amounting to less than \$10,000, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials, and subcontracts, as applicable, are included and provided that indirect costs, contingencies, and markup, as applicable, are allocated.
 6. **SUBMITTAL OF ESCROW BID DOCUMENTS.**
 - 6.1 The Escrow Bid Documents shall be submitted to the County by the Proposer for verification of contents and placed in a sealed container within the time described in 1.1 above. The container shall be clearly marked on the outside with the Proposer's name, date of submittal, Project name, and the words "Escrow Bid Documents - Open only in the presence of Authorized Representatives of both County and contracted Design-Build Entity." A detailed list of the Escrow Bid Documents indicating each bid or pricing package in the container shall be submitted to the County for review and approval and a copy affixed to the container(s).

- 6.2 By submitting Escrow Bid Documents, Proposer represents that the material in the Escrow Bid Documents constitutes all the documentary information used in preparation of the portion or portions of the Final GMP referred to in the Escrow Bid Documents submitted and that the Proposer has personally examined the contents of the Escrow Bid Documents container and has found that the documents in the container are complete.
- 6.3 If Proposer's Qualifications and Proposal is based upon subcontracting any part of the Work, each subcontractor whose total subcontract price exceeds five percent (5%) of the total Final GMP proposed by Proposer, shall provide separate Escrow Bid Documents to be included with those of Proposer and supplemented throughout the Bid Package award process. Such documents shall be opened and examined in the same manner and at the same time as the examination described below for Proposer.

7. STORAGE, EXAMINATION, AND FINAL DISPOSITION OF ESCROW BID DOCUMENTS.

- 7.1 The Escrow Bid Documents will be placed in escrow, for the life of the Contract, in a location mutually agreeable to Proposer and County. The cost of storage will be paid by Proposer for the duration of the Project until final Contract payment and the final resolution of all claims and disputes arising out of or relating to the Work or the Contract. The storage facilities shall be the appropriate size for all the Escrow Bid Documents and located conveniently to both County's and Proposer's offices. Proposer may elect to store sealed escrow documents with the County at no cost to the Proposer.
- 7.2 The Escrow Bid Documents shall be examined by both County and Proposer, at any time deemed necessary by either County or Proposer, to assist in the negotiation of price adjustments and Change Orders or the settlement of disputes and claims. Examination of the Escrow Bid Documents is subject to the following conditions:
 - 7.2.1 As trade secrets, the Escrow Bid Documents are proprietary and confidential.
 - 7.2.2 County and Proposer shall each designate, in writing to the other party, and seven (7) Days prior to any examination, representatives who are authorized to examine the Escrow Bid Documents. No other person shall have access to the Escrow Bid Documents.
 - 7.2.3 Access to the documents may take place only in the presence of duly designated representatives of both County and Proposer. If Proposer fails to designate a representative or appear for joint examination on seven (7) Days' notice, then County representative may examine the Escrow Bid Documents alone upon an additional three (3) Days' notice.
- 7.3 The Escrow Bid Documents will be returned to Proposer at such time as the Contract has been completed and final resolution, by settlement or otherwise, of all claims and disputes has been achieved.

END OF DOCUMENT

DOCUMENT 00 54 28

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

Public Contract Code § 22300

This Escrow Agreement ("Escrow Agreement") is made and entered into this _____ day of _____, 2025, by and between the COUNTY OF ALAMEDA ("County"), and _____, whose place of business is _____ hereinafter called ("Design-Build Entity"), and [INSERT EITHER County, as escrow agent [OR] [NAME OF BANK]], a state or federally chartered bank in the state of California, whose place of business is located at _____] ("Escrow Agent"). This Escrow Agreement is intended to incorporate the requirements of Public Contract Code § 22300.

For the consideration hereinafter set forth, County, Design-Build Entity, and Escrow Agent agree as follows:

1. Pursuant to Public Contract Code § 22300, Design-Build Entity has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by County pursuant to the Contract entered into between County and Design-Build Entity for the in the amount of \$_____ dated _____ (the "Contract"). Alternatively, on written request of Design-Build Entity, County shall make payments of the retention earnings directly to Escrow Agent. When Design-Build Entity deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify County within ten (10) Days of the deposit. The market value of the securities at the time of substitution shall be at least equal to the cash amount then required to be withheld as retention under terms of Contract between County and Design-Build Entity. Securities shall be held in name of _____ and shall designate Design-Build Entity as beneficial owner.
2. County shall make progress payments to Design-Build Entity for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified above.
3. When County makes payment of retention earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Design-Build Entity until the time that the escrow created under this Escrow Agreement is terminated. Design-Build Entity may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the Parties shall be equally applicable and binding when County pays Escrow Agent directly.
4. Design-Build Entity shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of County. Such expenses and payment terms shall be determined by County, Design-Build Entity, and Escrow Agent.
5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Design-Build Entity and shall be subject to withdrawal by Design-Build Entity at any time and from time to time without notice to County.
6. Design-Build Entity shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from County to Escrow Agent that County consents to withdrawal of amount sought to be withdrawn by Design-Build Entity.
7. County shall have the right to draw upon the securities in event of default by Design-Build Entity. Upon seven (7) Days' written notice to Escrow Agent from County of the default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by County.
8. Upon receipt of written notification from County certifying that the Contract is final and complete, and that Design-Build Entity has complied with all requirements and procedures applicable to the

Contract, Escrow Agent shall release to Design-Build Entity all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

9. Escrow Agent shall rely on written notifications from County and Design-Build Entity pursuant to Paragraphs 5 through 8, inclusive, of this Escrow Agreement and County and Design-Build Entity shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth above.
10. Names of persons who are authorized to give written notice or to receive written notice on behalf of County and on behalf of Design-Build Entity in connection with the foregoing, and exemplars of their respective signatures are as stated and signed below.

At the time the Escrow Account is opened, County and Design-Build Entity shall deliver to Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement by their proper officers on the date first set forth above.

On behalf of County:

On behalf of Design-Build Entity:

Title

Title

Name

Name

Signature

Signature

Address

Address

On behalf of Escrow Agent:

Title

Name

Signature

Address

END OF DOCUMENT

DOCUMENT 00 54 36

BIM PERFORMANCE REQUIREMENTS

PART 1 - GENERAL

1.1 SUMMARY

1.1.1 This Document describes requirements for Building Information Modeling (BIM) of the Project, including:

- 1.1.1.1 File Formats, level of detail, and model integrations.
- 1.1.1.2 Systems to be modeled.
- 1.1.1.3 Model updating, usage, and final As Built deliverable

1.1.2 Related Documents

- 1.1.2.1 Document 01 11 14 (Summary of Work – Design Services and Deliverables)
- 1.1.2.2 Document 01 33 00 (Submittal Procedures)
- 1.1.2.3 Document 01 31 00 (Project Management and Coordination)
- 1.1.2.4 Document 01 77 00 (Closeout Procedures)
- 1.1.2.5 Division 02-48 Technical Specifications as prepared by Design-Build Entity

1.1.3 Design-Build Entity shall utilize a Building Information Modeling (BIM) system to submit design and construction document work in the form of a Virtual Construction Model (VC Model) of the project buildings and site in a parametric 3D format in order to maximize design and construction coordination of the facility through interference checking (clash detection) and code compliance studies within that electronic format.

- 1.1.3.1 Submit the VC Model to the County's Project Manager for review during the Request for Qualifications and Proposal and Construction Document Phase (if required). Submittals are outlined in Document 01 11 14 (Summary of Work – Design Services and Submittals) (if required).
- 1.1.3.2 Use the VC Model and associated model aggregation platform to facilitate the construction methods and means.
- 1.1.3.3 Update the VC Model and associated model aggregation platform progressively throughout the design and construction period to incorporate all sub-contractor information and approved changes.
- 1.1.3.4 Provide a final "as-built" VC Model to the County's Project Manager for the County's non-restricted right to use in operating and managing the facility.
- 1.1.3.5 Engage in regular BIM management meetings with the County and Design-Build Team participants to discuss and evolve the scope of work described through this Document. Discussion topics will include element modeling responsibilities, software interoperability, 2.5d modeling scope, best practices, and technical feasibility in the context of rapidly evolving BIM technology.

1.2 USE OF THE VIRTUAL CONSTRUCTION MODEL

- 1.2.1 Design-Build Entity will be required to develop a BIM model to the levels defined in this Document and agreed to in the final BIM Execution Plan, and at no additional cost to the Owner.
- 1.2.2 Intent of the VC Model and Aggregate Platform: The VC Model and aggregate platform shall be developed for design evaluation, coordination, communication and collaboration purposes during design and construction. At the completion of the Work, the VC model shall be turned over to the County. The County shall have exclusive rights to the model for their use in operating and managing the facility.
- 1.2.3 Basis of Information for Modeling: Design-Build Entity's Investigations, Existing Documents, Reports and Surveys shall be the basis of information for the VC Model described herein.
- 1.2.4 Relation of BIM to other Contract Documents: The BIM may be used by Design-Build Entity as a tool to produce a broad range of construction documentation. Hardcopy documentation shall be used as the basis of construction. Not all building components required by the contract documents will be included in the BIM.

1.3 DEFINITIONS

- 1.3.1 BIM: Building Information Modeling, a process of constructing electronic models of facility's buildings and sites.
- 1.3.2 BIM Manager: The individual responsible for managing Design-Build Entity's modeling and coordination process, including managing Design-Build Entity's BIM Staff and all other aspects of Design-Build Entity's BIM requirements.
- 1.3.3 Level of Development (LOD): The term used to describe the fullness and definitiveness of the Model. The LOD definition is based on the AIA E 202 – 2008 document and expanded into a document.
- 1.3.4 Model Aggregation Platform: The VC system models shall be aggregated into a single building information model via Autodesk® Navisworks software.
- 1.3.5 Native Model: A Model created in a specific 3D parametric modeling software platform. For example, a model made in Revit.
- 1.3.6 Object: The term used to describe the 3D virtual representation of each of the separate sub-parts of Model such as doors, walls, equipment etc. If an Object is, in itself, comprised of several sub-elements, the sub-elements shall be grouped into one virtual representation of that Object.
- 1.3.7 Room: The term used to describe any space within the enclosed walls of the building. The space may be rectangular or more complex.
- 1.3.8 Virtual Construction (VC) Model: Design-Build Entity's Virtual Construction Model using 3-D Building Information Modeling (BIM) technologies to convey the design and construction elements of the project's buildings and site. The VC Model will consist of a minimum of seven system models e.g., Civil, Architectural, Structural, Mechanical, Electrical, Fire Protection and Equipment.

1.4 MINIMUM REQUIREMENTS

- 1.4.1 **General:** The VC Model shall be developed to include parametric components of major building and site elements as defined by Part 2 of this Document.
- 1.4.2 **Accuracy of the Models:** The VC Model and each of its system models shall be developed to within a tolerance of 1/4" plus or minus.
- 1.4.3 **Parametric Data:** The VC Model may vary in level of detail for individual elements, but at a minimum shall include sufficient parametric data to support use and analysis of:
 - 1.4.3.1 Functional and visual representation of all spaces.
 - 1.4.3.2 Constructability review of Design-Build Entity's documents.
 - 1.4.3.3 Clash detection and correction of all major systems.
 - 1.4.3.4 Construction methods and means.
 - 1.4.3.5 Construction scheduling.
 - 1.4.3.6 As-built documentation and modeling.

1.4.4 **GEO-SPATIAL DATUM CONTROL**

- 1.4.4.1 The federated Model and all of its Native Models shall be developed based on the California Coordinate System of 1983 (CCS83) horizontal datum control system, for Zones 1 through 6 as applicable to the Project location, and the NAVD 88 vertical datum control system.
 - 1.4.4.2 The three-dimensional coordination of the Native Models to the VC Model shall be established using the above datum.
- 1.4.5 **File Format:** Revit or any file format (BIM application(s) or software(s)) approved by the County's Project Manager may be used for development of the VC Model providing that it is a true parametric, data-based application.

BIM application(s) and software(s) for reviewing the Federated Model shall use the current version of Autodesk® Navisworks software.

The preferred Native Model software is listed in the following matrix. The selection of software other than the preferred listed shall be reviewed and approved by the Owner and its BIM consultants. Any software submitted for use must support the BIM Requirements listed in this document and the resulting functions of the BIM Execution Plan (BEP).

Suggested Native Model Software Matrix		
Discipline	Native Model Software	Comments
Architectural	Revit® Architecture	
Fixtures, and Equipment	Revit Architecture	Applies to stationary items only
Structural	Revit Structure	
HVAC	Revit MEP® AutoCAD MEP ® CAD-Duct ®	
Plumbing	Revit MEP AutoCAD MEP CAD-Pipe	
Fire Protection	AutoSPRINK®	

Suggested Native Model Software Matrix		
Electrical	Revit MEP AutoCAD MEP	
Security Electronics	Revit MEP AutoCAD MEP	
Civil	AutoCAD Civil 3D ®	
Landscape	Revit Architecture AutoCAD	

- 1.4.6 Design-Build Entity shall maintain a matrix similar to that above that summarizes BIM software tools used on the project by all participants.
- 1.4.7 Level of Detail: The VC Model shall be developed and detailed sufficiently to meet the requirements of the Request for Qualifications and Proposal (if required) and the Contract Documents. The two levels of detail are Generic-model(ed) and Project-model(ed), as defined below. All elements listed under Part 2 Products shall be Project-model(ed). All other elements may be Generic model(ed). The level of detail described by Part 2: Products shall be subject to further discussion, clarification, and evolution through BIM management meetings. Design-Build Entity will maintain a building component matrix that documents the BIM scope and clarifies responsibilities and level of detail. This matrix shall be subject to County approval.
- 1.4.7.1 “Generic-model(ed)”: the model and its elements may be based upon the standard objects available from the modeling software without project-specific customization. In addition, generic components may be used early in the BIM development process as “placeholders” for “project modeled” components.
- 1.4.7.2 “Project-model(ed)”: the model and/or a specific element must be customized to reflect project-specific configuration.
- 1.4.7.3 “2.5D Elements”: Model management may require use of 2.5D components. This type of component includes parametric, plan and elevation information but does not include 3D data. The scope of use for 2.5D elements shall be determined through discussions held at BIM management meetings.
- 1.4.8 OmniClass: The OmniClass Construction Classification System (known as OmniClass or OCCS) is a classification system for the construction industry developed by the Construction Specification Institute (CSI). It builds upon MasterFormat for work results, UniFormat for elements and EPCI (Electronic product Information Cooperation) for structuring products. OmniClass is a reference library that will serve as the foundation upon which information is transferred between the construction and operations phases via the VC Model. Design-Build Entity shall include the appropriate OmniClass classification in the list of attributes that is assigned to the building elements that will be Project-model(ed).

PART 2 - PRODUCTS

2.1 SYSTEM MODELS

- 2.1.1 Civil Systems: The Civil Systems Model shall be a sub-system model linked to the architectural system model. The Civil Systems model shall serve as the basis for project shared coordinates through which the position of building elements on the site will be coordinated. Except as noted, provide project-model(ed) elements of:

- 2.1.1.1 Topography: 1) existing natural and/or graded contours, and 2) new grades and finish contours.
- 2.1.1.2 Planting: 1) existing major landscaped areas, 2) existing trees to remain, 3) new landscaped areas, 4) new trees, and 5) irrigation lines over 2" diameter. Planting may be generic-model(ed).
- 2.1.1.3 Surface Improvements: 1) pavements, 2) curbs and gutters, 3) retaining walls, and 4) exterior non-building structures such as pools, shade structures etc.
- 2.1.1.4 Existing Structures: 1) all buildings within the project area intended to remain, 2) buildings intended to be demolished. All existing structures may be generic-model(ed) exterior surface only; interior elements are not required.
- 2.1.1.5 Storm Water and Sanitary Sewers: 1) existing lines (over 3" diameter), boxes and structures within project area, 2) all new lines, boxes, and structures, and 3) existing public lines, boxes and structures beyond the project area but serving as points of connection for the project. Storm Water and Sanitary Sewers outside the buildings may be generic-model(ed).
- 2.1.1.6 Utilities: 1) existing domestic and fire water main and branch lines (2" and larger diameter) within project area, 2) all new domestic and fire water lines, 3) existing electrical overhead and underground lines within project area, all new electrical lines outside buildings, 4) existing telephone and data lines within project area, 5) all new telephone and data lines outside buildings, 6) existing gas lines within project area, and 7) all new gas lines outside buildings. Utilities outside buildings may be generic-model(ed).
- 2.1.1.7 Other requirements:
 - 2.1.1.7.1 Quantities: data to reflect accurate quantities of the above elements.
 - 2.1.1.7.2 Schedules: data for installation of the above elements.
- 2.1.2 Architectural Systems: The Architectural Systems Model shall be the primary model to which others are linked. Except as noted, provide project-model(ed) elements of:
 - 2.1.2.1 Spaces: 1) net square footage of all occupy spaces, 2) gross constructed floor area, 3) room names and numbers, and 4) floor, base, wall, and ceiling finishes.
 - 2.1.2.2 Exterior Walls and Curtain Walls: 1) type and composition, 2) height, length, and width, and 3) thermal, acoustic, fire, and security ratings.
 - 2.1.2.3 Partitions: 1) type and composition, 2) height, length, and width, and 3) thermal, acoustic, fire, and security ratings.
 - 2.1.2.4 Floors: 1) type and material, 2) thickness, and 3) finishes with manufacturer's name and product numbers. Link floor structure to the Structural Systems Model.
 - 2.1.2.5 Ceilings: 1) type and composition, 2) height, length, and width, and 3) thermal, acoustic, fire, and security ratings.

- 2.1.2.6 Roof Coverings and Openings: 1) configuration, 2) drainage system, and 3) penetrations for modeled building components.
- 2.1.2.7 Exterior Doors, Windows, and Louvers: 1) type and material, 2) height, width, and thickness, 3) thermal, acoustic, fire, and security rating, 4) location, and 5) hardware elements or group.
- 2.1.2.8 Interior Doors, Windows, and Louvers: 1) type and material, 2) height, width, and thickness, 3) thermal, acoustic, fire, and security rating, 4) location, and 5) hardware elements or group.
- 2.1.2.9 Stairs and Ramps: 1) stairs and railings, 2) ramps and railings, and 3) handrails and guardrails.
- 2.1.2.10 Elevators and Escalators: 1) elevator cabs and doors, 2) elevator hoist-way doors and trim, 3) elevator machinery and equipment, 4) escalator belts and railings, and 5) escalator machinery and equipment.
- 2.1.2.11 Casework and Counters: 1) type and material, 2) height, width, and depth, 3) location, and 4) hardware.
- 2.1.2.12 Plumbing Fixtures: 1) type and material, 2) location, 3) trim, and 4) finishes. Link fixtures and trim to the Mechanical Systems Model.
- 2.1.2.13 HVAC Grills and Registers: 1) type and material, 2) location, 3) trim, and 4) finishes. Link fixtures and trim to the Mechanical Systems Model.
- 2.1.2.14 Electrical Fixtures: 1) type and material, 2) bulb type and wattage, 3) location, 4) trim, and 5) finishes. Link fixtures and trim to the Electrical Systems Model.
- 2.1.2.15 Miscellaneous Fittings: 1) toilet partitions, 2) toilet room accessories, 3) grab bars, 4) personal storage lockers, 5) display cases, and 6) other surface applied quasi-permanent items such as mirrors etc.
- 2.1.2.16 Other requirements:
 - 2.1.2.16.1 Quantities: data to reflect accurate quantities of the above elements.
 - 2.1.2.16.2 Schedules: data for installation of the above elements.
- 2.1.3 Structural Systems: The Structural Systems Model shall be a sub-system model linked to the architectural system model. Except as noted provide project-model(ed) elements of:
 - 2.1.3.1 Foundations and footings: 1) type and configuration, and 2) depth, length, and width.
 - 2.1.3.2 Slab(s) on-grade: 1) type and configuration, 2) under-slab base and waterproofing, 3) recesses, curbs, pads, closure pours, and 4) major penetrations.
 - 2.1.3.3 Basement Walls: 1) type and composition, 2) height, length, and width, and 3) thermal, acoustic, fire, and security ratings.

- 2.1.3.4 Elevated Floors: 1) columns and beams, 2) primary and secondary framing members, 3) bracing, 4) connections, and 5) framed, composite, and/or slab decks.
- 2.1.3.5 Roofs: 1) columns and beams, 2) primary and secondary framing members, 3) bracing, 4) connections, and 5) framed, composite, and/or slab decks.
- 2.1.3.6 Joints: 1) expansion and/or contraction, and 2) seismic.
- 2.1.3.7 Stairs and Ramps: 1) openings and framing, and 2) railing supports.
- 2.1.3.8 Shafts and Pits: 1) openings and framing, and 2) railing supports.
- 2.1.3.9 Other requirements:
 - 2.1.3.9.1 Quantities: include data to reflect accurate quantities of the above elements.
 - 2.1.3.9.2 Schedules: data for installation of the above elements.
 - 2.1.3.9.3 Fireproofing: Fireproofing is not to be included in the BIM, but clash detection studies shall include definition of tolerances for conflict detection.
 - 2.1.3.9.4 Color Code: color code structural steel from other elements.
- 2.1.4 Mechanical: The Mechanical Systems Model shall be a sub-system model linked to the architectural system model. Except as noted provide project-model(ed) elements of:
 - 2.1.4.1 Heating, Ventilating, and Air Conditioning: 1) all heating, ventilating, air-conditioning, exhaust fans, and specialty equipment, 2) air supply, return, ventilation, and exhaust ducts, including space-consuming elbows and transitions, 3) fire dampers with ratings, 4) mechanical piping, and 5) registers, diffusers, grills, and hydronic baseboards. Coordinate and link fixtures and trim to the Architectural Systems Model.
 - 2.1.4.2 Plumbing: 1) all domestic plumbing piping and fixtures, 2) floor and area drains, and 3) related equipment.
 - 2.1.4.2.1 Piping larger than 1 .5" diameter shall be modeled.
 - 2.1.4.3 Roof Drainage: 1) all piping and fixtures, and 2) related equipment.
 - 2.1.4.3.1 Piping larger than 1 .5" diameter shall be modeled.
 - 2.1.4.4 Other requirements:
 - 2.1.4.4.1 Quantities: data to reflect accurate quantities of the above elements.
 - 2.1.4.4.2 Schedules: schedule data for installation of the above elements.

- 2.1.4.4.3 Equipment Clearances: Clearances for major equipment and all M/E/P Equipment and Architecturally Significant Medical Equipment, as model objects for conflict detection and maintenance access requirements.
- 2.1.4.4.4 Color Code: separate color code for each type of element.
- 2.1.5 Electrical: The Electrical Systems Model shall be a sub-system model linked to the architectural system model. Except as noted provide project-model(ed) elements of:
 - 2.1.5.1 Interior Electrical Power and Lighting: 1) all interior electrical components, 2) lighting, receptacles, special and general-purpose power receptacles, 3) lighting fixtures, 4) panelboards and control systems, and 5) conduit and cable trays.
 - 2.1.5.1.1 Individual conduit larger than 1 .5" diameter shall be modeled.
 - 2.1.5.1.2 Groups or clusters runs of conduit of all sizes shall be modeled.
 - 2.1.5.2 Exterior Building Lighting: 1) all exterior electrical components, 2) lighting, receptacles, special and general-purpose power receptacles, 3) lighting fixtures, 4) panelboards and control systems, and transformers, and 5) utility connection and equipment.
 - 2.1.5.2.1 Individual conduit larger than 1 .5" diameter shall be modeled.
 - 2.1.5.2.2 Grouped or clustered runs of conduit of all sizes shall be modeled.
 - 2.1.5.3 Telephone, Data, Television, and Other Low Voltage: 1) all interior low voltage components, 2) outlets, receptacles, special and controls, 3) fixtures, 4) panelboards, equipment racks, and control systems, and 5) conduit and cable trays.
 - 2.1.5.3.1 Individual conduit larger than 1 .5" diameter shall be modeled.
 - 2.1.5.3.2 Groups or clusters runs of conduit of all sizes shall be modeled.
 - 2.1.5.4 Other requirements:
 - 2.1.5.4.1 Quantities: data to reflect accurate quantities of the above elements.
 - 2.1.5.4.2 Schedules: schedule data for installation of the above elements.
 - 2.1.5.4.3 Equipment Clearances: Clearances for major as model objects for conflict detection and maintenance access requirements.
 - 2.1.5.4.4 Color Code: separate color code for each type of element.
- 2.1.6 Fire Suppression: The Fire Suppression Systems Model shall be a sub-system model linked to the architectural system model. Except as noted provide Project-model(ed) elements of:

- 2.1.6.1 Fire Suppression System: 1) valves and risers, 2) all main, branch, and drains lines, 3) sprinkler heads, and fittings, 4) pumps.
- 2.1.6.2 Fire Alarms: 1) alarm and notification devices, and 2) detection systems.
- 2.1.6.3 Other requirements:
 - 2.1.6.3.1 Quantities: data to reflect accurate quantities of the above elements.
 - 2.1.6.3.2 Schedules: schedule data for installation of the above elements.
 - 2.1.6.3.3 Equipment Clearances: Clearances for major equipment as model objects for conflict detection and maintenance access requirements.
 - 2.1.6.3.4 Color Code: separate color code for each type of element.
- 2.1.7 Equipment: The Equipment Model may be a sub-system model. Equipment includes furniture, fixtures, and equipment and systems, security equipment and systems, conveyance equipment and systems, manufacturing equipment and systems, etc. and provide for the following:
 - 2.1.7.1.1 Equipment
 - 2.1.7.1.2 Related mechanical, plumbing, and electrical requirements.
 - 2.1.7.1.3 Quantities: data to reflect accurate quantities of the above elements.
 - 2.1.7.1.4 Schedules: schedule data for installation of the above elements.
 - 2.1.7.1.5 Equipment Clearances: equipment clearances as model objects for conflict detection and maintenance access requirements.

2.2 MODEL SOFTWARE REQUIREMENTS

- 2.2.1 Design-Build Entity's selected BIM application(s) and software(s) for the VC Model shall:
 - 2.2.1.1 Have maximum interoperability between systems models and shall be fully compatible with the current version of Autodesk® Navisworks software.
 - 2.2.1.2 Be provided in a format that is compatible with a free software download for viewing Design-Build Entity's models with the ability to save and track user annotations and notes.
 - 2.2.1.3 Contain reports/logs of:
 - 2.2.1.3.1 Discrepancies and/or clarifications in the Construction Documents identified during the modeling process.
 - 2.2.1.3.2 Conflicts between location and alignment of model elements with resolutions developed by Design-Build Entity.

- 2.2.1.3.3 Quantities of modeled building element.
- 2.2.1.3.4 Schedule for each building element.
- 2.2.1.4 For any additional electronic model information that is not supported by the Revit, or the primary software solution approved by Program manager, Design-Build Entity shall utilize AutoDesk® Navisworks software (Manage, Review, Simulate and Freedom) to create and utilize .nwd files.
- 2.2.1.5 Provide reports/logs in a format that links with scheduling software utilities.

PART 3 - EXECUTION

3.1 DEVELOPMENT AND SUBMITTAL OF THE MODELS

- 3.1.1 Submit a BIM Execution Plan within (14) days of the notice to proceed in accordance with the requirements of this Document.
 - 3.1.1.1 Design-Build Entity shall provide qualified BIM Manager and staff to manage the BIM process and develop the required BIM Execution Plans (BEP). Design-Build Entity BIM Manager shall be responsible for overseeing development of all submittals generated from BIM data, and managing the coordination process including:
 - 3.1.1.1.1 Managing the information of Design-Build Entity and subcontractor's responsible for creating models, analyzing "clashes" and resolving coordination issues.
 - 3.1.1.1.2 "Gap" modeling of all design elements and building systems, which may occur between systems discipline models, as necessary for design clarity and coordination of the work.
- 3.1.2 Design-Build Entity shall provide a Work Room / Conference Room, sized to function as a collaborative conference room for design reviews, presentations, and coordination work sessions.
- 3.1.3 Design-Build Entity shall provide hardware to support BIM modeling, presentations and coordination work sessions including projectors and large interactive viewing screens or large flat panel monitor for reviewing and/or modifying BIM models.
- 3.1.4 Design-Build Entity shall develop the VC Model and its systems models in compliance with the Contract Documents and the following:
 - 3.1.4.1 Develop and submit all of the systems models concurrently. Note: if any of the systems models qualify as deferred approvals, they may be submitted separately.
 - 3.1.4.2 Submit models with generic-model(ed) information as required to satisfy the requirements of the Request for Qualifications and Proposal as outlined in Document 00 21 16 (Request for Qualifications and Proposals) (if required).
 - 3.1.4.3 Submit a minimum Level of Development (LOD) 300 VC Model to the Owner's representative for review and approval during the Construction Documents

Phase outlined in Document 01 11 14 (Summary of Work – Design Services and Submittals), for review and coordination.

- 3.1.4.4 Submit partially complete models as needed at any time when Design-Build Entity requests changes and/or clarifications.
- 3.1.4.5 Submit fully completed VC Model and its systems models, prior to construction.
- 3.1.4.6 Submit updated systems models complying with final approved shop drawing submittals.
- 3.1.4.7 Submit the “as-built” VC Model and its systems models as part of the closeout process.

3.2 UPDATING THE MODELS DURING CONSTRUCTION

3.2.1 The VC Model shall be updated/revised to keep it current with construction activity as follows:

- 3.2.1.1 Update the VC Model progressively throughout the construction period to incorporate all construction actions so that the VC Model shall be developed to the following LOD As-built VC Model including:
 - 3.2.1.1.1 Shop Drawings:
 - 3.2.1.1.2 Approved Change Orders
 - 3.2.1.1.3 Fabrication, assembly, and detailing
 - 3.2.1.1.4 Field Modifications
- 3.2.1.2 Generators: LOD 500 for the generator room and associated electrical equipment, with the exception of conduits less than 3” diameter
- 3.2.1.3 Water Tank and Phase 5 Water Main: No BIM modeling required
- 3.2.1.4 Building Management Systems: LOD 350 for equipment rooms only, with the exception of conduits less than 3” diameter
- 3.2.1.5 Fire Life Safety Systems: LOD 350 for equipment rooms only, with the exception of conduits less than 3” diameter
- 3.2.1.6 Security Electronics Systems: LOD 350 for equipment rooms only, with the exception of conduits less than 3” diameter
- 3.2.1.7 Doors (Visitation, Housing Unit, Sliding Doors): No BIM modeling required
- 3.2.1.8 HVAC Equipment & Distribution and Insulation Replacement at Mechanical Coils: No BIM Modeling required
- 3.2.1.9 Ring Road: No BIM modeling required
- 3.2.1.10 Roofs at Housing Units 6-9 and 34: No BIM modeling required

3.2.1.11 Updating: Issue the updated VC Model and its systems models as part of each incremental permit package submittal.

3.2.1.12 Revising: Issue the revised VC Model and/or its systems models immediately after each incremental permit package has been approved.

3.2.2 Submit the updates and revisions to the County's Project Manager.

3.3 DELIVERY OF FINAL AS-BUILT MODELS

3.3.1 The final updated and revised VC Model and all its systems models shall be submitted to the County's Project Manager as part of the closeout submittals.

3.3.2 The VC Model and all its systems models will be:

3.3.2.1 Editable for future expansion or remodeling projects.

3.3.2.2 Functioning for use with 3-D Facilities Management Software.

END OF DOCUMENT

RELEASE OF LIABILITY / ELECTRONIC DATA FILES

County may provide copies of the Scope of Work documents as electronic data files. Design-Build Entity agrees to indemnify and hold harmless County, its Board, directors, employees, agents, and consultants against all damages, liabilities, or costs, including attorneys' fees and defense costs arising from the usage of these electronic data files. Design-Build Entity understands that these electronic data files are provided as a convenience to Design-Build Entity at Design-Build Entity's request and are not deemed a sale by County.

The contents of the electronic files are the intellectual property of County provided to Design-Build Entity for use in performing the Work of the Project and may not be used for any other purpose without the expressed written consent of County.

The delivery of the electronic files does not constitute the delivery of a professional work product. Only the signed paper prints constitute a professional work product, and because the electronic files may be altered, the signed paper prints must be referred to for the original and correct information. If there are any differences between the signed paper prints and the electronic file, the paper prints shall control. County is not responsible for any modifications made to the electronic file or for any information derived from the electronic files.

County makes no warranties, either expressed or implied, of merchantability and fitness for any particular purpose. Under no circumstances shall County be held liable for direct, indirect, or consequential damages as a result of the use of these electronic files. Use of any electronic files provided to Design-Build Entity shall not be construed in any way to limit Design-Build Entity's obligations to design, engineer, furnish, construct, checkout, startup, and test a complete and operable Project (including tie-ins to utilities and Interconnection Facilities) in accordance with the provisions of the County's Contract Documents.

The electronic files provided in digital format are provided "as-is" and without any guarantees of compatibility with any other software packages or any drawing conventions. The files are not warranted to be free from viruses. The information contained within these files is not guaranteed for accuracy. It is the sole responsibility of Design-Build Entity to verify the accuracy of any information contained within the files prior to use. A duly executed copy of this document shall be returned to County before any electronic files are released.

The undersigned shall be duly recognized by their company as having the authority to execute this document.

Print Name: _____

Print Name: _____

Title: _____

Title: _____

COUNTY _____

Design-Build Entity _____

Signature: _____

Signature: _____

Company: _____

Company: _____

Date: _____

Date: _____

Please state the files requested and the purpose for the request: _____

_____ ||

END OF DOCUMENT

DOCUMENT 00 55 00

NOTICE TO PROCEED [Phase I Design and Pre-construction Services to Establish FGMP] [Phase II Remaining Design, Pre-Construction, and Construction after FGMP Acceptance]

Dated _____, 202__

TO: _____

ADDRESS:

COUNTY AUTHORIZATION

CONTRACT FOR DESIGN-BUILD SERVICES

African American Wellness Hub Project No. 22016

You are notified that the Contract Time under the above contract will commence to run on _____, 2025 ("Date of Commencement") and diligently continue with completion of the Work, subject to the conditions to the start of Work set forth below.

Design-Build Entity shall achieve Substantial Completion no later than _____ Calendar Days from and after the Date of Commencement, which establishes _____, 202__ as the deadline for Design-Build Entity to achieve Substantial Completion of the Work, subject to adjustment as provided by the Contract Documents.

If Design-Build Entity fails to achieve Substantial Completion of the Work within the contractual duration and deadline established herein, the Agreement provides for the assessment of **\$4,000.00** per day as liquidated damages to County for each consecutive Calendar Day delay by Design-Build Entity in achieving Substantial Completion of the Work.

Thereafter, if Design-Build Entity fails to achieve Final Completion of the Project within forty-five (45) Calendar Days after the date by which Design-Build Entity achieves Substantial Completion, the Agreement provides for the assessment of **\$1,500.00** per Calendar Day as liquidated damages to County for each consecutive Calendar Day delay by Design-Build Entity in achieving Final Completion of the Work.

Notwithstanding the Date of Commencement established above, before Design-Build Entity may start any Work at the Project Site, Design-Build Entity must:

County of Alameda

By: _____

END OF DOCUMENT

DOCUMENT 00 61 13.13

PERFORMANCE BOND

Bond No.: _____

Premium: _____

Any claim under this Bond should be sent to the following address:

KNOW ALL PERSONS BY THESE PRESENTS:

That we, _____
("Principal") and _____, a corporation organized and existing under the laws of the State of _____ and authorized to transact surety business as an Admitted Surety Insurer in the State of California ("Surety"), are held and firmly bound unto COUNTY OF ALAMEDA ("Obligee") in the sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION of the above obligation is such that, whereas Principal has entered into a contract dated _____, 202_, with Obligee to do and perform the following work, to wit: DESIGN, PRECONSTRUCTION & CONSTRUCTION of the _____ Project to be located at _____ as is more specifically set forth in the Contract Documents, reference to which is hereby made.

NOW, THEREFORE, if Principal shall well and truly perform all the requirements of said contract documents required to be performed on its part, at the times and in the manner specified therein, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

PROVIDED, that any alterations in the work to be done or the materials to be furnished, or changes in the time of completion, which may be made pursuant to the terms of said Contract Documents, shall not in any way release Principal or Surety thereunder, nor shall any extensions of time granted under the provisions of said Contract Documents release either Principal or Surety, and notice of such alterations or extensions of time is hereby waived by Surety.

PROVIDED, that if any action is commenced on this Bond by Obligee, in addition to the sum specified above, Principal and Surety, their heirs, executors, administrators, successors and assigns, jointly and severally, shall be obligated to pay to Obligee all costs, attorneys' fees, and other litigation expenses incurred by Obligee in collecting monies due under the terms of this Bond.

(signature lines on following page)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

SIGNED AND SEALED, this _____ day of _____, 202_

(Principal)

(Surety)

By: _____
(Signature)

(Signature)

(SEAL AND ACKNOWLEDGEMENT OF NOTARY)

(SEAL AND ACKNOWLEDGEMENT OF NOTARY)

BOND TERMS AND CONDITIONS

1. Principal and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Obligee for the complete and proper performance of the Work under the Contract which is incorporated herein by reference.
2. If Principal completely and properly performs all of its obligations concerning the Work under the Contract, Surety and Principal shall have no obligation under this Bond.
3. If there is no Obligee Default, Surety's obligation under this Bond shall arise after:
 - 3.1 Obligee has declared a Principal Default concerning the Work under the Contract pursuant to the terms of the Contract; and
 - 3.2 Obligee has agreed to pay the Balance of the Contract Sum owing under the Contract for the Work to:
 - 3.2.1 Surety in accordance with the terms of this Bond and the Contract; or
 - 3.2.2 To Principal selected to perform the Work under the Contract in accordance with the terms of this Bond and the Contract.
4. When Obligee has satisfied the conditions of Article 3 above and has terminated Principal for Default, Surety shall promptly (within thirty (30) Days) and at Surety's expense elect to take one of the following actions:
 - 4.1 Arrange for Principal, with consent of Obligee, to perform and complete the Work under the Contract unless Obligee expresses its objection, in which case Surety must elect an option described in 4.2, 4.3, 4.4, or 4.5, below); or
 - 4.2 Undertake to perform and complete the Work under the Contract itself, through an independent Principal fully qualified to perform and complete the Work under the Contract and to which Obligee does not reasonably object. In order to be fully qualified under 4.1, an independent Principal may not be in any way, presently or formerly, associated with or related to Principal in any form, or to its officers or employees. Obligee may reject, in its sole discretion, use of Principal as an agent or subcontractor of an independent Principal; or
 - 4.3 Obtain qualifications proposals from qualified Design-Build Entities acceptable to Obligee for a contract for performance and completion of the Work under the Contract (other than the original Principal), and, upon determination by Obligee of the most qualified Principal offering the greatest value, arrange for a contract to be prepared for execution by Obligee and Principal selected with Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety on the same forms of the bonds issued on the Contract; and, if Surety's obligations defined in Article 6, below, exceed the Balance of the Contract Sum, then Surety shall pay to Obligee the amount of such excess; or
 - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new Principal and with reasonable promptness under the circumstances, and, after investigation and consultation with Obligee, determine in good faith its monetary obligation for which it may then be liable to Obligee under Article 6, below, for the performance and completion of the Work under the Contract and, as soon as practicable after the amount is determined, tender payment therefor to Obligee with full explanation of the payment's calculation. If Obligee accepts Surety's tender under this Paragraph 4.4, Obligee may still hold Surety liable for future damages then unknown or liquidated or unliquidated damages resulting

from Principal's Default. If Obligees disputes the amount of Surety's tender under 4.4, Obligees may exercise all remedies available to it at law to enforce Surety's liability under Article 6, below; or

- 4.5 Deny liability after conducting a reasonable and good faith investigation of Obligees' declaration of Default and all facts and circumstances relating to Surety's obligations to Obligees.
5. If Surety does not proceed as provided in Article 4 above, then Surety shall be deemed to be in Default on this Bond ten (10) Days after receipt of an additional written notice from Obligees to Surety demanding that Surety perform its obligations under this Bond. At all times Obligees shall be entitled to enforce any remedy available to Obligees at law, in equity, or under the Contract including, without limitation, and by way of example only, rights to perform work, protect work, mitigate damages, or coordinate work with other consultants or Design-Build Entities.
6. Surety's monetary obligation under this Bond is limited to the amount of this Bond, plus the Balance of the Contract Sum owing from Obligees hereunder. Subject to these limits, Surety's obligations under this Bond are commensurate with the obligations of Principal for the Work under the Contract. Surety's obligations shall include, but are not limited to:
 - 6.1 The responsibilities of Principal under the Contract for completion of the Work under the Contract and correction of defective work;
 - 6.2 The responsibilities of Principal under the Contract to pay liquidated damages, and other damages for which no liquidated damages are specified in the Contract, actual damages caused by non-performance of the Work under the Contract, including but not limited to, all valid and proper backcharges, offsets, payments, indemnities, or other damages;
 - 6.3 Additional legal costs, costs of design professional services not included in the scope of the Contract Documents, and delay costs resulting from the Principal Default or resulting from the actions or failure to act of Surety under Article 4, above.
7. No right of action shall accrue on this Bond to any person or entity other than Obligees or its heirs, executors, administrators, or successors.
8. Surety hereby waives notice of any change, alteration, or addition to the Contract or to related subcontracts, purchase orders and other obligations, including changes of time. Surety consents to all terms of the Contract, including provisions on changes to the Contract. No extension of time, change, alteration, modification, deletion, or addition to the Contract Documents, or of the work required thereunder, shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond.
9. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between Obligees and Principal regarding the Contract, or in the courts of the County of Alameda, or in a court of competent jurisdiction in the location in which the work is located.
10. Notice to Surety, Obligees or Principal shall be mailed or delivered to the address shown on the signature page.
11. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted here from and provisions conforming to such statutory requirement shall be deemed incorporated herein.

12. **DEFINITIONS.**

- 12.1 Balance of the Contract Sum: The total amount payable by Obligee to Principal for Work under the Contract pursuant to the terms of the Contract after all proper adjustments have been made under the Contract, for example, deductions for progress payments made, increases/decreases for approved modifications to the Contract, valid and proper backcharges, offsets, indemnities, or other damages.
 - 12.2 Contract: The agreement between Obligee and Principal identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Principal Default: Material failure of Principal, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract concerning Work under the Contract.
 - 12.4 Obligee Default: Material failure of Obligee, which has neither been remedied nor waived, to pay Principal progress payments due for Work under the Contract or to perform other material terms of the Contract with regard to Work under the Contract, if such failure is the cause of the asserted Principal Default and is sufficient to justify Principal termination of the Contract.
13. Qualification Regarding Extended Warranties. Surety's liability for extended warranties for subcontractors and suppliers shall not apply to a breach of any such extended warranty under the Contract that occurs more than five (5) years after the applicable commencement of the correction guarantee date for the entirety of the Work under the Contract.

END OF DOCUMENT

DOCUMENT 00 61 13.16

PAYMENT BOND
[Civ. Code, §§ 9550 - 9554]

Bond No.: _____

Premium: _____

Any claim under this Bond should be sent to the following address:

KNOW ALL PERSONS BY THESE PRESENTS:

That we, _____,
As "Principal", and _____,
a corporation organized and existing under the laws of the State of _____ and authorized to transact surety business as an Admitted Surety Insurer in the State of California, as "Surety", are held and firmly bound unto COUNTY OF ALAMEDA, as "Obligee", in the sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION of the above obligation is such that, whereas the Principal has entered into a contract dated _____, 202_, with the Obligee to do and perform the following work, to wit: DESIGN, PRECONSTRUCTION & CONSTRUCTION of the _____ Project to be located at _____ as is more specifically set forth in the Contract Documents, reference to which is hereby made.

KNOW, THEREFORE, if the Principal or a subcontractor fails to pay any of the persons named in § 9100 of the Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and subcontractors pursuant to § 13020 of the Unemployment Insurance Code, with respect to such work and labor, the Surety will pay for the same, in an amount not exceeding the sum specified in this Bond, and also, in case suit is brought upon this Bond, a reasonable attorneys' fee, to be fixed by the court.

This bond shall ensure to the benefit of any of the persons named in § 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this Bond.

(signature lines on following page)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

SIGNED AND SEALED, this _____ day of 202_

(Principal)

(Surety)

By: _____
(Signature)
(SEAL AND ACKNOWLEDGEMENT OF NOTARY)

(Signature)
(SEAL AND ACKNOWLEDGEMENT OF NOTARY)

BOND TERMS AND CONDITIONS

1. The Principal and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to County and to Claimants, to pay for labor, materials and equipment furnished for use in the performance of the Work which is incorporated herein by reference.
 2. With respect to County, this obligation shall be null and void if the Principal:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies, and holds harmless County from all claims, demands, liens, or suits by any person or entity who furnished labor, materials, or equipment for use in the performance of the Construction Contract, provided County has promptly notified the Principal and the Surety (at the address described in Article 10 below) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to the Principal and the Surety, and provided there is no County Default.
 3. With respect to Claimants, this obligation shall be null and void if the Principal promptly makes payment, directly or indirectly through its subcontractors, for all sums due Claimants. However, if Principal or its subcontractors fail to pay any of the persons named in Civil Code § 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Principal or subcontractors pursuant to Unemployment Insurance Code § 13020, with respect to such work and labor, then Surety will pay for the same, and also, in case suit is brought upon this Bond, a reasonable attorneys' fee, to be fixed by the court.
 4. Consistent with the California Mechanic's Lien Law, Civil Code §§ 8000 - 9566, the Surety shall have no obligation to Claimants under this Bond unless the Claimant has satisfied all applicable notice requirements.
- Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety under this Bond.
- Amounts due the Principal under the Contract shall be applied first to satisfy claims, if any, under any Construction Performance Bond and second, to satisfy obligations of the Principal and the Surety under this Bond.
5. Principal and Surety agree that this Labor and Materials Payment Bond shall not be considered a part of the Contract between Principal and the County. Principal and Surety further agree that this Labor and Materials Payment Bond is a separate obligation of the Principal and its Surety, and that any attorneys' fee provision contained in this Labor and Materials Payment Bond shall not apply to the Contract. In the event there is any litigation between the parties arising from the breach of the Contract, each party will bear its own attorneys' fees in the litigation. County shall not be liable for payment of any costs, expenses, or attorneys' fees of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
 6. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.

7. Suit against Surety on this Payment Bond may be brought by any Claimant, or its assigns, at any time after the Claimant has furnished the last of the labor or materials, or both but, pursuant to Civil Code § 9558, must be commenced before the expiration of six (6) months after the period in which stop notices may be filed as provided in Civil Code § 9356.
8. Notice to the Surety, County, or the Principal shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, County, or the Principal, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page above.
9. This Bond has been furnished to comply with the California Mechanic's Lien Law including, but not limited to Civil Code §§ 9550 - 9560. Any provision in this Bond conflicting with said statutory requirements shall be deemed deleted and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. This Bond shall be construed as a statutory bond and not as a common law bond.
10. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Principal shall promptly furnish a copy of this Bond or shall permit a copy to be made.
11. **DEFINITIONS.**
 - 11.1 Claimant: An individual or entity having a direct contract with this Principal or with a subcontractor of the Principal to furnish labor, materials, or equipment for use in the performance of the Contract, as further defined in Civil Code § 9100. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the Principal and the Principal's subcontractors, and all other items for which a stop notice might be asserted. The term Claimant shall also include the Employment Development Department as referred to in Civil Code § 9554.
 - 11.2 Contract: The agreement between County and the Principal identified on the signature page, including all Contract Documents and changes thereto.
 - 11.3 County Default: Material failure of County, which has neither been remedied nor waived, to pay the Principal as required by the Contract, provided that failure is the cause of the failure of Principal to pay the Claimants and is sufficient to justify termination of the Contract.

END OF DOCUMENT

DOCUMENT 00 62 30

SUBCONSULTANT/SUBCONTRACTOR PROCUREMENT

1. GENERAL.

- 1.1 Proposer shall use only Subconsultants and Subcontractors selected in accordance with the requirements of this Document 00 62 30 (Subconsultant/Subcontractor Procurement). In hiring all Subconsultants and Subcontractors, Proposer must comply with both the County's Small Local Emerging Businesses ("SLEB") Program and Documents 00 22 19 (Elation Application and Project Stabilization Community Benefits Agreement) (each a "Program" and collectively "County's Outreach Program").
- 1.2 Proposer must use the general contractor and lead architect (and if the Proposer is a partnership, limited partnership, or other association, the partners, general partners, and association members) which were identified by Proposer in its responses submitted in response to Document 00 21 16 (Request for Qualifications – Instructions to Proposers) for the African American Wellness HUB Project ("Project") and any amendments, modifications, or supplements thereto (the "Statement of Qualifications I Information") as being intended to participate in performing the Contract. Proposer may not substitute or replace its general contractor or lead architect (or any of its partners, general partners, association members) except upon providing the County with satisfactory evidence of the parties' default or other good cause. Any substitute or replacement entity must meet the minimum qualification requirements for the position for which it is proposed. Proposer may make such a substitution or replacement only with prior approval of the County.
- 1.3 Any Subconsultant or Subcontractor identified in the Qualification and Proposal Information (if requested) is eligible to perform Work as provided in the Qualification and Proposal Information, provided that Subconsultant or Subcontractor is otherwise eligible to perform Work as provided in the Contract Documents
- 1.4 With the prior approval of the County and as provided in 3.1 below, Proposer may substitute or replace a Subconsultant or Subcontractor identified in the Qualification and Proposal Information (if requested) (other than the general contractor or lead architect) in the same manner as it procures other Subconsultants and Subcontractors, as provided for herein. For any such substitution or replacement, Design-Build Entity shall submit to the County, for its review and approval, all information required by the Qualification and Proposal Information for the position for which it is proposed.
- 1.5 Proposer shall procure all Subconsultants and Subcontractors not described in 1.2 and 1.3 above as provided below.

2. SUBCONSULTANT/SUBCONTRACTOR PROCUREMENT PLAN.

- 2.1 As required by Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers) also referred to as Proposer's Proposal shall include a Subconsultant/Subcontractor Procurement Plan ("Procurement Plan").
- 2.2 The Procurement Plan shall, in narrative form, detail Proposer's planned packaging and selection method for all Subconsultants and Subcontractors, excluding only Subconsultants and Subcontractors identified in 1.2 and 1.3 above (if requested), to be

used by Proposer describing how Proposer intends to meet the County's Minimum Requirements. This plan shall include, but is not limited to the following:

- 2.2.1 A list of all expected or anticipated Subconsultant/Subcontractor Bid Packages, broken down by category of service, including pre-construction and construction phases, the sequence of soliciting bids and anticipated dates of award.
- 2.2.2 A description of the scope of Work for each Bid Package.
- 2.2.3 The qualification and proposal criteria to be used in selecting the Subconsultant/Subcontractor team expected to perform the services for each Bid Package.
- 2.2.4 The estimated costs required to complete the scope of Work for each Bid Package.
- 2.2.5 The Best Value method of selection, including all items described in Article 3 below (to the extent applicable).
- 2.2.6 A description of how letting these Bid Packages in the proposed manner will further the best interests of the County and promote Best Value design and construction.
- 2.2.7 In separate sections of the proposed Procurement Plan provide confirmation that the Procurement Plan represents a committed and realistic plan to achieve compliance with the County's Small Local and Emerging Business Program, and Elation Application and Project Stabilization Community Benefits Agreement as required by Document 00 22 19 (Elation Application and Project Stabilization Community Benefits Agreement). As part of each such section of its proposed Procurement Plan, Proposer shall submit all forms required by Document 00 22 19 (Elation Application and Project Stabilization Community Benefits Agreement).
 - 2.2.7.1 The County and the successful Proposer shall use their combined best efforts to modify Documents 00 22 19 (Elation Application and Project Stabilization Community Benefits Agreement) for the successful Proposer's use in implementing its Procurement Plan in a manner that achieves the goals of the County's Outreach Programs.
- 2.2.8 A description of any intended Subconsultant/Subcontractor agreement commercial terms that differ from the Contract Documents, and of any intended Subconsultant/ Subcontractor liquidated damage measures.
- 2.3 The successful Proposer shall make any revisions to its Procurement Plan reasonably requested by the County. Following receipt of a finally approved Procurement Plan, the successful Proposer shall implement the Procurement Plan.
- 2.4 Subject to complying with the Project Master Schedule and Contract Time, following award of the Contract, Design-Build Entity has no restraints on when it may bid or assign work to Subcontractors during the course of the Project.

3. OTHER REQUIREMENTS.

3.1 As required by Public Contract Code § 22185.6, all subcontractors bidding on contracts to perform Work, including those described in 1.3 above, shall be afforded the protections contained in Chapter 4 (commencing with § 4100) of Part 1 of the Public Contract Code. Following award of the Contract, except for those construction subcontractors listed in the Qualifications and Proposals (if requested), Design-Build Entity shall proceed as listed in this Public Contract Code § 22185.6 in awarding construction subcontracts with a value exceeding one-half of 1 percent (1/2 of 1%) of the contract price allocable to construction work for projects with a contract value of greater than or equal to ten million dollars (\$10,000,000).

3.1.1 Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the County.

3.1.2 Provide a fixed date and time on which qualifications statements, bids, or proposals will be due for the subcontracted work, which will be awarded in accordance with the procedure established herein.

3.1.3 Establish reasonable qualification criteria and standards.

3.1.4 Award the subcontract on a Best Value basis. The process may include prequalification or shortlisting.

END OF DOCUMENT

SMALL LOCAL EMERGING BUSINESS (SLEB) PROGRAM

1. SMALL LOCAL EMERGING BUSINESS (SLEB) PARTICIPATION.

1.1. Small Local Emerging Business (“SLEB”) Program: The County has implemented the SLEB Program in order to develop and promote economic growth in the community it serves. In order to be awarded the Contract for this Project, a Design-Build Entity must either be a SLEB or meet the requirements of Paragraph 1.1.1 below. A SLEB is a local business that is either small or emerging and has been certified as such by the County.

- Local Business: A business having a fixed office with a street address in Alameda County and having a valid business license issued by the County or by a City within Alameda County.
- Small Business: A business which has been certified by the County as local and which meets the U.S. Small Business Administration (USSBA) small-business size standards for its classification.
- Emerging Business: A business which has been certified by the County as local and which meets one-half (1/2) of the USSBA small-business size standards for its classification and which has been in business less than five (5) years. A local business may qualify as an emerging business for a maximum of five (5) years.
- A certification application package can be found online at <http://www.acgov.org/auditor/sleb/cert.htm> and may be used by each Design-Build Entity and/or its Subconsultants to apply for SLEB certification.

1.1.1 Design-Build entities that do not meet the SLEB requirements set forth above must partner, joint venture, or subcontract with one or more County-certified SLEBs for at least twenty percent (20%) of the amount listed as total design services in Document 00 42 53 (Proposal Form) in order to be considered for the Contract award. Thereafter, such a Design-Build Entity must submit as part of its Final GMP Proposal written documentation evidencing a firm contractual commitment to meet this minimum SLEB participation requirement. Participation for SLEB Architects, Engineers, and Subconsultants must be described in Design-Build Entity’s Subconsultant/Subcontractor Procurement Plan (See Document 00 62 30).

1.1.2 Evidence of participation shall be provided immediately upon request at any time during the term of such Contract. Design-Build Entity shall provide participation reports during the term of said Contract and a final account statement at the end of the Contract to the County.

1.1.3 Design-Build Entity shall utilize County’s contract compliance application (Elation Systems) in accordance with Article 6 below, to report SLEB Design-Build Entity Team members and Subconsultant participation during the term of the Contract. Evidence of participation shall be provided immediately upon request at any time during the term of the Contract. All SLEB participation, except for a SLEB Design-Build Entity, must be tracked and monitored utilizing the Elation Systems compliance system. Design-Build Entity and Design-Build Entity’s small and/or emerging local businesses participating as Design-Build Team members and

Subconsultants on the awarded Contract are required to use the Elation Systems web-based compliance system to report and validate payments received and made to certified small and/or emerging local businesses. It is Design-Build Entity's responsibility to ensure that it and its Design-Build Entity Team members and Subconsultants are registered and trained as required to utilize the Elation System. SLEB Design-Build Entity with SLEB Design-Build Entity Team members and Subconsultants must enter payments made to each lower tier design professional in Elation Systems and ensure that SLEB Design-Build Entity Team members and Subconsultants confirm payments received.

- 1.1.4 Design-Build Entity shall not substitute or add any small and/or emerging local business(es) Subconsultant(s) during the term of the Contract without prior written approval from the County's Auditor-Controller Agency, Office of Contract Compliance ("OCC"). Requests to substitute or add a small and/or emerging local business shall be submitted in writing to the Project Manager.
- 1.1.5 The County reserves the right to waive these SLEB participation requirements for this Project, if the additional estimated cost to the County, which may result from inclusion of these requirements, exceeds five percent (5%) of the total estimated Contract Sum or Ten Thousand Dollars (\$10,000), whichever is less.
- 1.1.6 Design-Build Entity shall meet the agreed upon SLEB requirements within fifteen (15) Business Days of the date non-compliance began or pursuant to written notice from the County notifying Design-Build Entity that it is no longer in compliance with the program. County will be under no obligation to pay Design-Build Entity for the percent committed to a SLEB Design-Build Entity Team member or Subconsultant if the Work is not performed by the listed small and/or emerging local business.
- 1.1.7 The following entities are exempt from the SLEB requirements as described above and are not required to subcontract with a SLEB:
 - 1.1.7.1 non-profit community-based organizations (CBO);
 - 1.1.7.2 non-profit churches or non-profit religious organizations (NPO);
 - 1.1.7.3 public schools; and universities; and
 - 1.1.7.4 government agencies.
- 1.1.8 Non-profits must provide proof of their tax-exempt status. These are defined as organizations that are certified by the U.S. Internal Revenue Service as 501(c)(3).
- 1.1.9 For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System (Elation Systems) contact the County Auditor-Controller's Office of Contract Compliance ("OCC") located at 1221 Oak St., Rm. 249, Oakland, CA 94612 at Tel: (510) 891-5500, Fax: (510) 272-6502 or online at <https://acgov.org/auditor/sleb/occ.htm>

2. APPLICATION.

- 2.1. To be considered for a Contract award, Design-Build Entity must meet the SLEB Program requirements identified herein for known (listed) Subconsultants as of the date of Phase II Proposals submissions.

- 2.2. Design-Build Entity Team members and Subconsultants of all tiers may contribute toward the SLEB program requirements.
- 2.3. The calculation of achieved SLEB utilization during performance of the Work of the Contract will be based on the net confirmed payments received by the listed SLEBs, as evidenced in Elation Systems. All payments made to SLEB Design-Build Entity Team members and Subconsultants must be documented in Elation Systems.
- 2.4. Payment delays may occur if Design-Build Entity, its Design-Build Entity Team members or its Subconsultants are not in compliance with required SLEB utilization, as evidenced in Elation Systems.

3. NONDISCRIMINATION.

3.1. Purpose.

3.1.1 Design-Build Entity shall comply with the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964 and shall not, in regard to any position for which an employee or applicant for employment is qualified, discriminate against any employee or applicant for employment because of race, creed, color, disability, sex, sexual orientation, political affiliation, or by any other non-merit factors be otherwise subjected to discrimination. The Proposer shall apply SLEB requirements to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, Vietnam Era Veteran's status, political affiliation, or any other non-merit factors. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruiting advertising; layoff or termination; rates of pay or other terms of compensation; and selection for training, including apprenticeship. Design-Build Entity agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

3.1.2 Design-Build Entity shall, in all solicitations or advertisements for employees for the Project, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam Era Veteran's status, political affiliation, or any other non-merit factors.

4. MEETINGS.

4.1. After award of the Contract and prior to beginning Work, the General Services Agency may hold a SLEB conference at which a representative of Design-Build Entity and of each SLEB Subconsultant must attend. As it becomes necessary during the course of the Contract, the General Services Agency may call meetings of Design-Build Entity Team members and pertinent SLEB Subconsultants.

5. INFORMATION AND RECORDS.

5.1. For the purposes of determining compliance with this program, Design-Build Entity shall provide the County with access to all records and documents that relate to SLEB participation, and to all records of employment advertisements, application forms, tests, and other selection techniques used to hire, transfer, promote, train, or retain personnel, and other pertinent records and data pertaining to the Project. Proprietary information will be safeguarded.

6. **ALAMEDA COUNTY CONTRACT COMPLIANCE SYSTEM**

- 6.1. Alameda County utilizes the Elation Systems contract compliance application as part of its commitment to assist contractors to comply with legal and contractual requirements. Elation Systems, a secure web-based system, was implemented to monitor compliance and to track and report SLEB participation in County contracts.
- 6.2. Design-Build Entity and all participating SLEB Subconsultants awarded contracts as a result of this procurement process for this Project are required to use Elation Systems to submit SLEB information including, but not limited to, weekly certified payrolls, monthly/progress payments made to lower tier subconsultants, confirmation of payments received, and other information related to SLEB participation. Although it is not required for contract compliance monitoring, subconsultants are encouraged to enter information for all of their lower tier participating local subcontractors/subconsultants for County reporting purposes only. Design-Build Entity Team members and Subconsultants participating in County contracts will be provided training, support, and use of Elation Systems at no charge.
- 6.3. Upon Contract award:
 - 6.3.1 The County will provide Design-Build Entity an Elation Systems Registration Guide that will instruct them on how to register and use Elation Systems free of charge.
 - 6.3.2 Design-Build Entity Team members and its Subconsultants should schedule a representative from their office/company, along with each of their Subconsultants at all tiers, to register and review the online Elation Systems tutorial found at <https://www.elationsys.com/elationsys/>.
- 6.4. It is Design-Build Entity's responsibility to ensure that it, its Core Consultants, and Subconsultants are registered and trained and utilize Elation Systems as required.
- 6.5. For further information, please see the Elation Systems website <https://www.elationsys.com/elationsys/> or call Elation Systems at (925) 924-0340.
- 6.6. If there are any other questions regarding the utilization of Elation Systems please contact the Auditor-Controller's Office of Contract Compliance ("OCC") located at 1221 Oak Street, Room 249, Oakland, California 94612, Telephone (510) 891-5500, or online at <https://acgov.org/auditor/sleb/occ.htm>

END OF DOCUMENT

DOCUMENT 00 65 19.13

AGREEMENT AND DESIGN-BUILD ENTITY GENERAL RELEASE

This Agreement and Design-Build Entity General Release ("Agreement and Release"), is made and entered into this [DATE] day of [MONTH], [YEAR], by and between the COUNTY OF ALAMEDA, and [NAME OF DESIGN-BUILD ENTITY], whose place of business is at [] hereinafter called "Design-Build Entity."

RECITALS

- 1. County and Design-Build Entity entered into an Agreement for Progressive Design-Build Services dated [], in the County of Alameda, State of California.
2. The Work under the above Agreement for the design, preconstruction, and construction of the [] Project has been completed and accepted by the County.

Now, therefore, it is mutually agreed between County and Design-Build Entity as follows:

AGREEMENT

- 3. Design-Build Entity will not be assessed liquidated or other damages except as detailed below:

Table with 2 columns: Description and Amount. Rows include Original Contract Sum, Modified Contract Sum, Final GMP, Payments to Date, Liquidated Damages, Other Damages, and Final Payment Due Design-Build Entity.

- 4. Subject to the provisions of this Agreement and Release, County shall forthwith pay to Design-Build Entity the sum of [] Dollars and [] Cents (\$[]) less any amounts withheld by County under applicable law and the Contract or represented by any Stop Payment Notice(s) to withhold funds on file with County as of the date of such payment.
5. Design-Build Entity acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against County arising from the performance of work under this Contract except for the claims described in Article 6, and continuing obligations described in Article 6 below.

6. The following claims submitted under Document 00 52 00 (Agreement) and/or Document 00 72 53 (General Conditions) are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release:

<u>Claim No.</u>	<u>Date Submitted</u>	<u>Description of Claim</u>	<u>\$ Amount of Claim</u>
------------------	-----------------------	-----------------------------	---------------------------

[Indicate "None" or Insert information, including attachment if necessary]

7. Consistent with Public Contract Code § 7100, Design-Build Entity hereby agrees that, in consideration of the payment set forth in Article 4, above, Design-Build Entity hereby releases and forever discharges County, all its agents, employees, inspectors, assignees, and transferees from any and all liability, claims, demands, actions, or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
8. Guarantees and warranties for the Work, and any other continuing obligation of Design-Build Entity, shall remain in full force and effect as specified in the Contract Documents.
9. Design-Build Entity shall immediately defend, indemnify, and hold harmless County, all its respective agents, employees, inspectors, assignees, and transferees from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses, and liabilities that may be asserted against them by any of Design-Build Entity's suppliers and/or subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies, and equipment used, or contemplated to be used in the performance of this Contract, except for the Disputed Claims set forth in Article 6 above.
10. Design-Build Entity hereby waives the provisions of Civil Code § 1542 which provides as follows:
- A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.
11. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal, or other law, ruling or regulations, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.
12. Nothing herein waives or releases any rights, remedies, claims, and defenses provided by the Contract, law, and equity, and all such rights and remedies of County are expressly reserved and shall survive completion of the Work or termination of Contract, and execution of this Agreement and Design-Build Entity General Release.

COUNTY

DESIGN-BUILD ENTITY

BY: _____

BY: _____

Its: _____

Its: _____

*** CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING ***

END OF DOCUMENT

DOCUMENT 00 65 36

PROJECT WARRANTY AND CORRECTION GUARANTEE

TO THE COUNTY OF ALAMEDA for design, preconstruction, and construction of the

AFRICAN AMERICAN WELLNESS HUB PROJECT NO. 22016

The undersigned warrants and guarantees all construction performed on this Project and also warrants and guarantees all material and equipment incorporated therein.

Design-Build Entity hereby grants to County its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials, and equipment provided by Design-Build Entity and its Subcontractors of all tiers in connection with the Work in accordance with Article 9 of Document 00 72 53 (General Conditions). In addition, during the two (2) year correction guarantee period, Design-Build Entity will provide or perform all manufacturer's recommended maintenance on the systems specified in Document 00 73 13 (Special Conditions) at no cost to the County.

Neither final payment nor use or occupancy of the Work performed by Design-Build Entity shall constitute an acceptance of Work not done in accordance with Article 9 of Document 00 72 53 (General Conditions) or this Project Warranty and Correction Guarantee or relieve Design-Build Entity of liability in respect to any express warranties or responsibilities for faulty materials or workmanship.

If within two (2) years after the date of Substantial Completion of the Work or designated Component thereof, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be Defective, Design-Build Entity shall promptly, without cost to County and in accordance with County's written instructions, correct such Defective Work. Design-Build Entity shall remove any defective Work rejected by County and replace it with Work that is not defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Design-Build Entity fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, County may have the defective Work corrected or the rejected Work removed and replaced. Design-Build Entity shall pay for all claims, costs, losses, and damages caused by or resulting from such removal and replacement. Where Design-Build Entity fails to correct defective Work, or defects are discovered outside the correction period, County shall have all rights and remedies granted by Contract Documents, law, and equity.

Inspection of the Work shall not relieve Design-Build Entity of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Design-Build Entity shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the two (2) year (or any special or extended) correction guarantee period.

All abbreviations and definitions of terms used in this Agreement shall have the meanings set forth in the Contract Documents, including, without means of limitation, Document 01 42 00 (References and Definitions).

The foregoing Project Warranty and Guarantee is in addition to any other warranties or Contract obligations of Design-Build Entity contained in the Contract Documents, and not in lieu of, any and all other liability imposed on Design-Build Entity under the Contract Documents or at law with respect to Design-Build Entity's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Project Warranty and Correction Guarantee and any warranty, correction, or Contract obligation, of liability, of Design-Build Entity under the Contract Documents or at law,

such inconsistency or conflict shall be resolved in favor of the higher level of and longest duration of the contractual and statutory obligations of Design-Build Entity.

Nothing contained in this Project Warranty and Correction Guarantee shall be construed to establish a period of limitation with respect to other obligations of Design-Build Entity under the Contract Documents and in no way limits either Design-Build Entity's liability for Defective Work or the time within which proceedings may be commenced to enforce Design-Build Entity's obligations under the Contract Documents, law, or equity.

[DATE]

[DESIGN-BUILD ENTITY]

By: _____

Its: _____

END OF DOCUMENT

GENERAL CONDITIONS

1. INVESTIGATIONS AND SUBCONTRACTORS..... 1

 1.1 Investigation Required

 1.2 Design-Build Entity and Subcontractors

2. SCOPE OF PROGRESSIVE DESIGN-BUILD RESPONSIBILITY.....5

 2.1 Description of Work

 2.2 All-Inclusive Design-Build Obligation

3. CONTRACT AWARD AND COMMENCEMENT OF THE WORK.....9

 3.1 Commencement of Work

 3.2 Mobilization

4. BONDS AND INSURANCE 10

 4.1 Bonds

 4.2 Insurance

5. DRAWINGS AND SPECIFICATIONS..... 11

 5.1 Intent

 5.2 Drawing Details and Specification Descriptions

 5.3 Specifications and Drawings Do Not Control Division of Work

 5.4 Interpretation of Contract, Drawings and Specifications

 5.5 Checking/Updating of Drawings

 5.6 Necessary and Incidental Work

 5.7 Standards to Apply Where Detailed and/or Performance Specifications Are Not
 Furnished

 5.8 Order of Precedence of Contract Documents

 5.9 Design Deliverables, Shop Drawings, and Submittals to be Furnished by Design-
 Build Entity in Addition to Completed Design Drawings.

 5.10 Construction Documents

6. CONSTRUCTION BY THE COUNTY OR BY SEPARATE CONTRACTORS..... 18

 6.1 The County’s Right to Perform Construction and to Award Separate Contracts

 6.2 Mutual Responsibility

 6.3 County Authority Over Coordination

7. THE COUNTY AND PAYMENT 20

 7.1 The County’s Representatives

 7.2 Means and Methods of Design and Construction

 7.3 Receipt and Processing of Applications for Payment

8. CONTROL OF THE WORK..... 23

 8.1 Supervision of Work by Design-Build Entity

 8.2 Observation of Work by County

 8.3 Access to Site

 8.4 Existing Utilities

 8.5 Underground Facilities

9.	WARRANTY AND GUARANTEE; INSPECTION, CORRECTION, AND MAINTENANCE OF WORK	28
9.1	Warranty and Guarantee	
9.2	Inspection of Work	
9.3	Correction of Defective Work	
9.4	Acceptance and Correction of Defective Work by the County	
9.5	Rights Upon Inspection or Correction	
9.6	Samples and Tests of Materials and Work	
9.7	Proof of Compliance with Contract Provisions	
9.8	Acceptance	
9.9	Maintenance of Work	
10.	DESIGN-BUILD ENTITY’S ORGANIZATION AND EQUIPMENT	36
10.1	Design-Build Entity’s Legal Address	
10.2	Design-Build Entity’s Office at the Site	
10.3	Design-Build Entity’s Superintendents or Forepersons	
10.4	Proficiency in English	
10.5	Design-Build Entity’s and Subcontractors’ Employees	
10.6	Design-Build Entity to Supply Sufficient Workers and Materials	
10.7	Design-Build Entity to List Trades Working	
10.8	Design-Build Entity’s Use of the Site	
11.	PROSECUTION AND PROGRESS OF THE WORK	40
11.1	Schedules and Examinations of Contract Documents	
11.2	Lines and Grades, Measurements	
11.3	Maintenance, Access, Inspection, and Cost of Data and Project Records	
12.	CLAIMS BY DESIGN-BUILD ENTITY.....	44
12.1	Performance During Claim Process	
12.2	Notice of Third Party Claims	
12.3	Definition of Claim	
12.4	Claim Presentations	
12.5	Claim Resolution	
13.	LEGAL AND MISCELLANEOUS	47
13.1	Laws and Regulations	
13.2	Permits and Taxes	
13.3	Responsibility of Design-Build Entity and Indemnification	
13.4	Notice of Concealed or Unknown Conditions	
13.5	Notice of Hazardous Waste or Materials Conditions	
13.6	Suspension of Work	
13.7	Force Majeure	
13.8	Termination of Contract for Cause	
13.9	Termination of Contract for Convenience	
13.10	Contingent Assignment of Subcontracts	
13.11	Remedies and Contract Integration	
13.12	Patents	
13.13	“Or Equal” Substitution for Patented and Specified Articles	
13.14	Interest of Public Officers	
13.15	Limit of Liability	
13.16	Severability	
13.17	Contract Documents and Exercise of Contract Responsibilities	
13.18	Title to Work: No Liens	
13.19	Proprietary or Confidential Information of County	
13.20	Ownership of Results/Works for Hire	

13.21	Compliance with Americans with Disabilities Act	
13.22	Disputes	
13.23	Statute of Limitations	
13.24	Waivers	
13.25	Beneficial Occupancy	
13.26	Successors and Assigns	
13.27	Correction of Errors and Omissions	
13.28	Endorsements	
13.29	Use of Private Property	
13.30	Survival of Provisions	
14.	MODIFICATIONS OF THE CONTRACT DOCUMENTS	68
14.1	Changes, Modifications, and Force Account Work	
14.2	Entire Agreement	
14.3	Modifications	
15.	TIME ALLOWANCES.....	70
15.1	Time Allowance for Performance of Contract	
15.2	Entitlement to Change of Contract Time	
15.3	Weather Delays	
15.4	Notice of Delay	
15.5	No Damage for Design-Build Entity Caused Delay	
15.6	Time Extension Without Compensation	
15.7	Compensable Delay	
15.8	Liquidated Damages	
16.	WORKING CONDITIONS AND PREVAILING WAGES	75
16.1	Use of Site/Sanitary Rules	
16.2	Protection of Work, Persons, and Property	
16.3	Responsibility for Safety and Health	
16.4	Emergencies	
16.5	Use of Roadways and Walkways	
16.6	Nondiscrimination	
16.7	Prevailing Wages	
16.8	Environmental Controls	
16.9	Shoring Safety Plan	

1. INVESTIGATIONS AND SUBCONTRACTORS.

1.1 Investigation Required.

1.1.1 Prior to submitting any incremental Final GMP Proposal for this Project and prior to proceeding with the final design and construction Phase II for any Work Component, Design-Build Entity must do all things referred to in Document 00 52 00 (Agreement) regarding Design-Build Entity's representations and warranties contained in Article 5 thereof. Design-Build Entity is charged with all information and knowledge that a reasonable design professional and contractor would ascertain from having performed this required pre-Final GMP Proposal review, research, investigation, and analysis. The Contract Sum, amount to be paid to Design-Build Entity, based on the submittal of the Final GMP, must include entire cost of all work "incidental" to completion of the Work, as that term is defined in Paragraph 2.1 (Description of Work) of this Document 00 72 53 (General Conditions).

1.1.2 Conditions Shown or Indicated in the Contract Documents and exhibits to the Project Manual: Design-Build Entity may rely on the accuracy of limited types of technical information shown or indicated in the Contract Documents as they refer to underground conditions, as-built conditions, or other conditions or obstructions, including such information contained in Documents 00 31 32 (Geotechnical Data and Existing Conditions), and any Drawings of documents depicting existing buildings and Site conditions shall be used for informational purposes only.

1.1.2.1 As to above-ground conditions or visible as-built conditions, there is no warranty, express or implied, or any representation, express or implied, that such information is correctly shown or indicated, so long as such information is reasonably verifiable by pre-Proposal investigation. Design-Build Entity is required to conduct an independent investigation and verify existing above-ground conditions. In proceeding with the design and construction, Design-Build Entity shall rely on the results of its own independent investigation.

1.1.2.2 As to any subsurface condition shown or indicated in the Contract Documents, as well as those subsurface conditions identified in Document 00 31 32 (Geotechnical Data and Existing Conditions), Design-Build Entity may rely only upon the accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated. Subsurface conditions shown or indicated in Document 00 31 32 (Geotechnical Data and Existing Conditions) shall be used for informational purpose only. The County is not responsible for any unreasonable opinions or conclusions Design-Build Entity draws from such information.

1.1.3 Reference is made to Document 00 31 32 (Geotechnical Data and Existing Conditions) for identification of:

1.1.3.1 Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that have been made available for informational purposes. Design-Build Entity shall

independently verify the information provided in the reports in developing the design of the Project and performing the Work.

- 1.1.3.2 Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been made available for informational purposes. These reports and drawings are not Contract Documents but as provided in Document 00 31 32 (Geotechnical Data and Existing Conditions), Design-Build Entity may rely on the technical information in these reports and drawings. Design-Build Entity shall independently verify the information provided in the reports in developing the design of the Project and performing the Work.
- 1.1.4 Subsurface and unknown conditions affecting cost or quantities of the Work materially differing from those indicated in Document 00 31 32 (Geotechnical Data and Existing Conditions) and elsewhere in the Contract Documents, or in the other information supplied for informational purposes, will be compensated by the County. Compensation for unknown differing conditions shall be allowed as provided in the Contract Documents.
- 1.1.5 Except for the reliance described above, except in the case of latent conditions not discoverable upon a reasonable pre-Proposal investigation, and except as otherwise provided in Document 00 31 32 (Geotechnical Data and Existing Conditions), Design-Build Entity may not rely upon or make any Claim against the County, or any of its consultants, with respect to: any unreasonable Design-Build Entity interpretation of, or unreasonable conclusion drawn from, any technical data or other such data, interpretations, opinions, or information contained in such information. All documents provided by the County are for information purposes and Design-Build Entity is responsible for verification of all information needed to produce Construction Documents.
- 1.1.6 Records of existing structures on or in the vicinity of the Site may be supplied in Document 00 31 32 (Geotechnical Data and Existing Conditions) or may be on file in the County's offices and may be examined by Design-Build Entity (but subject to the conditions of Document 00 31 32 (Geotechnical Data and Existing Conditions)). Design-Build Entity should note that existing structures or facilities may differ from records on file, or may have been altered, and that no representation is made, nor responsibility taken, nor warranty given, either express or implied, by the County as to the accuracy of locations and other data shown on records, except as otherwise provided in the Contract Documents. After the Contract award, Design-Build Entity shall conduct all necessary investigations and become familiar with any and all actual as-built conditions to perform contracted Work.
- 1.1.7 See Paragraph 13.4 (Notice of Concealed or Unknown Conditions) of this Document 00 72 53 concerning notice of concealed or unknown conditions.

1.2 Design-Build Entity and Subcontractors.

- 1.2.1 With each incremental Final GMP Proposal, Design-Build Entity must list and provide the required information for the Subcontractors as described in Public Contract Code § 22185.6, Subconsultants, and specifically identified designers (together for purposes of this Document 00 72 53, "Subcontractor") who will perform a portion of Work, in accordance with the County-approved

Subconsultant/Subcontractor Procurement Plan. Design-Build Entity shall submit updated Designated Subcontractors Lists to the County as they become reasonably available following Contract award or the Notice to Proceed with Phase II of Work. Design-Build Entity shall provide the following information:

- 1.2.1.1 Data required for notice and basis for selection of each proposed Subcontractor under the County-approved Subconsultant/Subcontractor Procurement Plan.
 - 1.2.1.2 Name of Subcontractor.
 - 1.2.1.3 Business address of Subcontractor.
 - 1.2.1.4 Telephone numbers and e-mail addresses of Subcontractor.
 - 1.2.1.5 Brief description of portion of Work to be performed under subcontract.
 - 1.2.1.6 Amount to be paid for Subcontractor's work, labor, or service.
 - 1.2.1.7 The Subcontractor's California Contractor's State License Number or Professional License Numbers and DIR Public Works Contractor Registration Number.
- 1.2.2 Design-Build Entity shall constantly give personal attention to faithful prosecution of Work, whether performed by Design-Build Entity's own forces or under subcontract, and shall keep the Work under personal control and shall not assign by power of attorney or otherwise, nor subcontract the whole or any part thereof, except as herein provided.
- 1.2.3 Consistent with Public Contract Code §§ 4101 et seq., Design-Build Entity shall not substitute any other person or firm as a Subcontractor or Subconsultant in place of any of those listed in the Qualifications and Proposal or later (for actual building design or construction), nor shall any Subcontractor assign or transfer subcontract, or permit the same to be performed in whole or in part by any other Subcontractor without written approval of the County. Should Design-Build Entity thereafter let out or subcontract any portion of the Work in violation of this requirement, County shall have the right to (1) cancel the Contract or (2) assess Design-Build Entity a penalty of not more than ten percent (10%) of the amount of the subcontract involved. Design-Build Entity shall provide the County with a complete copy of all executed subcontracts or final commercial agreements with Subcontractors and /or suppliers along with any modifications, amendments, or addenda thereto promptly upon County's written request.
- 1.2.4 Design-Build Entity shall provide the County with a copy of any Subcontractor prequalification forms to be utilized in Design-Build Entity's best value selection of Subcontractors prior to issuance of the Bid Package. The County will have the right to review and request inclusion of any qualification requirements it deems necessary to insure the qualifications of the proposers. Design-Build Entity and the County shall agree on a final form of the Subcontractor prequalification forms, which shall include the qualification criteria set forth in Paragraph 1.2.7 below. Design-Build Entity shall provide the County with all completed prequalification forms submitted by each Subcontractor to which Design-Build Entity intends to award any subcontract. At the time Design-Build Entity provides the County with completed prequalification forms submitted by

each Subcontractor to which Design-Build Entity intends to award any subcontract, Design-Build Entity shall advise the County in writing of the date by which Design-Build Entity intends to enter each subcontract with each Subcontractor. The County shall review the completed prequalification forms submitted by each Subcontractor, and prior to the date by which Design-Build Entity intends to enter each subcontract with each Subcontractor, County shall advise Design-Build Entity in writing of its disapproval of any such Subcontractor(s). Design-Build Entity shall upon request provide the County with a copy of each contract which Design-Build Entity proposes to enter into for subcontracting or assigning any portion of Work. Within the County's sole discretion, any Subcontractor may be deemed not qualified to perform work if the County determines that the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason, at any time consistent with Public Contract Code §§ 4101 et seq.

- 1.2.5 Subcontract agreements and assignments shall preserve and protect the rights of the County under the Contract Documents so that subcontracting and assignments will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Design-Build Entity shall require the Subcontractor's written agreement (1) to be bound to the terms of the Contract Documents; (2) to provide access to and the right to audit and the right to copy all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the bidding and performance of Work; and (3) to assume vis-à-vis Design-Build Entity all the obligations and responsibilities that Design-Build Entity assumes toward the County under the Contract Documents. The County shall be a designated intended third-party beneficiary of all subcontracts. If any provision of any subcontract or supply agreement is inconsistent with any provision of the Contract Documents, then the provisions that require greater quantity and/or better quality shall control. Design-Build Entity shall provide County with a copy of any notice to any Subcontractor that alleges that Subcontractor is in breach of its obligations. This provision shall specifically apply to those notices relating to actual or threatened termination of the Subcontract.
- 1.2.6 Design-Build Entity shall provide for the assignment to the County of all rights any Subcontractor may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by the Subcontractor under the Contract Documents.
- 1.2.7 Each Subcontractor shall be reliable and responsible and fully able to perform its portion of the Work covered by the proposed subcontract or assignment and able to complete the Work in accordance with the Contract Documents. Design-Build Entity may not use unqualified, inexperienced, or non-responsive Subcontractors. At a minimum, each Subcontractor and its proposed superintendent must have prior experience on at least two (2) subcontracts of similar scope and complexity. In addition, Subcontractors must not have been terminated for default on any project within the previous three (3) years and must never have submitted a false claim to any public entity.
- 1.2.8 No subcontract or assignment of the Contract or any part thereof shall relieve Design-Build Entity or Sureties of liabilities or obligations under this Contract.
- 1.2.9 No assignment by Design-Build Entity of the Contract or any part thereof, or funds to be received thereunder by Design-Build Entity, will be recognized unless

such assignment has written approval of the County and Surety has been given due notice and approved of such assignment in writing.

- 1.2.10 Design-Build Entity shall require each of its Subcontractors to execute agreements containing indemnity provisions coextensive with those in the Contract.
- 1.2.11 The County has the right to request all documentation that supports Design-Build Entity's selection of a Subcontractor. The County shall have the right of final approval as to the qualification(s) of a Subcontractor to perform its designated scope of work. Within the County's sole discretion, any Subcontractor may be deemed not qualified to perform work on the Project if the County or County's Representative determines that the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason.
- 1.2.12 The County reserves the right to issue payments to Design-Build Entity and Subcontractor jointly for Work performed under the Contract as well as directly to each Subcontractor supplier, and, if such rights shall be exercised by County, then such amount shall be credited against the Contract Sum due to Design-Build Entity hereunder and County shall be relieved and released from the obligation to make such payment to Design-Build Entity and Design-Build Entity shall be relieved and released as to County from the obligation to make such payments to each Subcontractor paid by County, but not from any of the other obligations and responsibilities of Design-Build Entity to County under the Contract Documents. At least seven (7) Days before exercising that right, County must give to Design-Build Entity written notice of County's intent to issue any such joint payment and provide Design-Build Entity the reasonable opportunity to respond thereto.

2. **SCOPE OF PROGRESSIVE DESIGN-BUILD RESPONSIBILITY.**

- 2.1 Description of Work. Design-Build Entity shall provide a complete and operable Project in accordance with this Contract, including providing, furnishing, and performing all Work and providing and furnishing all necessary supplies, housing, materials, and equipment, and all necessary management, supervision, labor, and Work required for the engineering, design, coordination, procurement, quality assurance and inspection, construction, installation, Startup, Checkout, Testing, Maintenance, Site cleanup, and training of the County's personnel, all in conformity with the requirements, Legal Requirements, criteria, performance guarantees, and warranties set forth in the Contract Documents. As part of providing a complete and operable Project, Design-Build Entity shall, among other things, coordinate and provide all necessary tie-ins to existing Site utilities and shall coordinate and provide all necessary tie-ins to Off-Site utilities and Interconnection Facilities. County will pay directly all fees associated with any such connection except as is provided in Paragraph 13.2.1 of this Document 00 72 53 (General Conditions). The signature and seal of a licensed engineer or architect shall be obtained as necessary for compliance with the Legal Requirements.
- 2.2 All-Inclusive Design-Build Obligation. Without limiting the generality of Paragraph 2.1 (Description of Work) hereof, Design-Build Entity shall provide, at a minimum, the following Work and Materials and Equipment as further specified and described in Documents 01 11 10 (Summary of Work) and 01 11 14 (Summary of Work - Design Services, Preconstruction Activities, and Deliverables) provided, however, that these sections shall not be construed in any way to limit Design-Build Entity's obligations hereunder to design, engineer, furnish,

construct, Checkout, Startup, and Test a complete and operable Project (including tie-ins to utilities and Interconnection Facilities) in accordance with the provisions of the Contract.

2.2.1 Design-Build Entity shall provide all engineering services and design, which will set forth in detail with Specifications, Drawings, and requirements for the procurement of the Materials and Equipment and for the construction of the entire Project and tie-in to the Interconnection Facilities. Design-Build Entity shall furnish the services of all personnel, including supervisors, engineers, designers, and draftsmen necessary for the preparation of all Drawings and Specifications required for the Work. The design shall include all architectural, civil, structural, mechanical, electrical, instrumentation and control work, plumbing, and specialties.

Design-Build Entity shall provide all equipment and materials and furnish the services of all supervision, buyers, inspectors, expeditors, and other personnel necessary to procure all Materials and Equipment for the construction of the Project and tie-in to the Interconnection Facilities. Design-Build Entity shall provide, install, complete, and pay for all labor, Materials and Equipment, tools, supplies, construction equipment and machinery, construction utilities (including all water, power, and sanitary facilities), transportation (including Specified infrastructure and improvements On-Site and Off-Site), customs clearance, quality assurance, and other facilities and services (including any temporary or consumable materials, water, fuels, and electricity necessary for the proper and safe execution and completion of the Work, including any of the utilities, as required). In addition, Design-Build Entity shall provide and maintain dedicated office space on or near the Project site for use by the County's Owner representatives. This office space shall include furnishings, secure internet access, power, and climate control to support daily activities, coordination, and project oversight. The location, configuration, and occupancy readiness of the office space shall be subject to County review and approval. Up to the time of Final Completion, as defined in Document 01 42 00 (References and Definitions), Design-Build Entity shall maintain all Materials and Equipment in accordance with manufacturer's requirements while such Materials and Equipment are in transit or in the care and custody of Design-Build Entity. Should Design-Build Entity cause damage to public or private roadways in its performance of the Work, Design-Build Entity shall make repairs as necessary without cost to the County. This excludes normal wear and tear from operations required for construction. 2.2.3 Design-Build Entity shall supervise and direct the Work, and shall furnish the services of all supervisors, foremen, skilled and unskilled labor, and all other personnel in sufficient quantities and with sufficient skills necessary to perform the Work in accordance with the Contract Documents. At the County's request, Design-Build Entity shall replace, at Design-Build Entity's expense, any individual if it is determined by the County that such individual's continued presence would jeopardize the quality or timely completion of the Work.

2.2.4 Whenever required by applicable laws or the Contract Documents, Design-Build Entity shall employ licensed personnel and Subconsultants as necessary to perform engineering, design, architectural, or other professional services in the performance of the Work. All such professional services shall be performed with the degree of care, diligence, and skill expected of a design-build entity (i) experienced and skilled in the design and construction of buildings of the quality, complexity, size, nature, site, and location comparable to the Project and (ii) familiar with (a) the Site upon which the Project is to be constructed and (b) local conditions and laws under which the Work is to be performed (such care, diligence,

and skill is the “Standard of Care”). Design-Build Entity’s licensed Subconsultants (architectural and engineering) shall owe a duty of care to the County in performing their architectural and engineering portions of the Work. Design-Build Entity shall be responsible to the County for acts and omissions of Design-Build Entity’s employees, Architect, Subconsultants, Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work. Design-Build Entity shall be responsible for all labor relations matters relative to the Work on the Site and shall at all times use all reasonable efforts to maintain harmony among all workers employed in connection with the Work on the Site. Design-Build Entity shall adopt and implement reasonable policies and practices designed to avoid work stoppage, slowdowns, disputes, and strikes.

- 2.2.5 Design-Build Entity is solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, and the County shall not be responsible for or exercise any control over the actions or omissions of Design-Build Entity, any Subcontractor, supplier, or any of their employees or agents performing any of the Work or Design-Build Entity’s warranty obligations. Design-Build Entity shall prosecute the Work continuously and diligently and complete the Work in accordance with all requirements of the Contract.
- 2.2.6 Design-Build Entity shall coordinate ingress and egress to and from the Site so as to minimize disruption to the Work and to traffic in the vicinity of the Site.
- 2.2.7 Design-Build Entity is responsible for the layout of the Work and shall perform all necessary surveying during the construction of the Project and tie-in to the Interconnection Facilities. The accuracy of all grades, elevations, alignments, and plumbing of any structures and the location of all Facilities described in the Construction Documents shall be the responsibility of Design-Build Entity. Design-Build Entity shall preserve all permanent survey construction monuments and benchmarks. Prior to the completion date, Design-Build Entity shall accurately correct all Project (including tie-ins to Interconnection Facilities) documents to as-built conditions and deliver to the County these as-built documents in accordance with the Contract Documents. Such documents shall show the location of the Project (including tie-ins to Interconnection Facilities) and shall show all related easements, improvement, utilities, and rights of way above and below ground, On- and Off-Site, as of the date of delivery of such documents. Such documents shall also show the dimensions and the distances to the nearest benchmarks.
- 2.2.8 Design-Build Entity shall provide appropriate installation and startup representatives from suppliers of major equipment and control systems, all necessary supervising personnel, all equipment, tools, construction and temporary material, and all labor for Checkout, Startup, and Testing. Design-Build Entity shall be responsible for Checkout, Startup, and Testing of the Project and shall carry out those activities in accordance with all applicable codes and Legal Requirements, Startup, and Checkout requirements and procedures as set forth in the Contract Documents.
- 2.2.9 Design-Build Entity shall provide, upon request of the County, reasonable temporary facilities at Design-Build Entity’s Off-Site offices to allow the County to review, inspect, and evaluate the Work in accordance with the Contract Documents. The temporary facility at the Off-Site office shall have the “big room” intent where collaboration and real time coordination between the project parties is enhanced through technology, process, and colocation.

- 2.2.10 Except for safety and warning signs, Design-Build Entity shall not install any signs on the Site without the express written consent of the County.
- 2.2.11 Design-Build Entity is responsible for all Site security until Final Completion, as defined in 1.5.2.53 of Document 01 42 00 (References and Definitions), or termination of the Agreement. Such security shall include, to the extent reasonably necessary, barriers, lighting, controlled access, and other measures required to prevent vandalism, theft, and danger to personnel, the Project, Materials and Equipment. The nature and extent of Site security measures shall be determined by Design-Build Entity, and the County relies upon Design-Build Entity's means and methods to provide adequate and appropriate Site security. After Final Completion, responsibility for Site security is returned to the County pursuant to this paragraph.
- 2.2.12 Design-Build Entity will be subject to the County's Site security regulations and restrictions.
- 2.2.13 Design-Build Entity shall prepare or cause to be prepared and shall furnish to County all drawing logs, drawings, manufacturers' drawings and data, supplier manuals, and operating manuals in accordance with the Contract Documents.
- 2.2.14 Design-Build Entity shall ensure that the County and its representatives shall, at all times, have access to the Site for all purposes. In order to allow the County and its representatives to be present, Design-Build Entity shall give the County at least three (3) Days advance notice of any system or equipment Checkout or Testing. If the County desires access to any places where Work is being performed or from which Materials and Equipment are being obtained, Design-Build Entity shall provide or arrange reasonable access thereto and shall provide County reasonable advanced notice of any factory tests or other Off-Site tests. Design-Build Entity shall maintain the Site in a safe condition to permit the County and any person authorized in writing by the County to inspect and review all field work during working hours, including Materials and Equipment, installation, calibration, Startup, and Testing.
- In addition, Design-Build Entity shall provide any participating State of California agencies and AHJs reasonable unrestricted access to observe, monitor, and inspect the Project. The State agencies' and AHJs' access to observe, monitor, and inspect shall include the right to review all documents and files relating to the Project, as well as construction on the Site, including all tests and inspections relating to design or construction of the Project.
- 2.2.15 As part of the procurement of equipment, Design-Build Entity shall provide the County a list of recommended operating spare parts, which list shall include all relevant costs and ordering lead time information with terms and conditions. If requested, Design-Build Entity shall procure such operating spare parts from suppliers, as requested by the County, on behalf of the County. The cost of such operating spare parts shall be covered by Change Order unless such spare parts are included in Division 01 as part of the Work.
- 2.2.16 When any equipment or portion of the Work is damaged, Design-Build Entity shall inform the County as soon as possible and provide the County a damage report detailing such occurrence, any required repairs, and the estimated duration of such repairs.

- 2.2.17 Design-Build Entity shall provide to the County all tests and measurements, laboratory analyses, and reports made or prepared in connection with the Work.
- 2.2.18 Design-Build Entity agrees that, in light of the high degree of confidence and trust that the County has reposed in Design-Build Entity: (a) Design-Build Entity has the duty to act in the County's best interests at all times throughout the course and performance of its design responsibilities pursuant to the Contract; and (b) when acting in any role other than as a designer, Design-Build Entity has a duty to protect the County's interests and shall act in such a manner as to consider the County's interests to be equal to the interest of Design-Build Entity throughout the course and performance of its non-design responsibilities pursuant to the Contract.

3. **CONTRACT AWARD AND COMMENCEMENT OF THE WORK.**

3.1 Commencement of Work.

- 3.1.1 The Contract Time will commence to run on the day indicated in Document 00 55 00 (Notice to Proceed). As a condition to the County signing Document 00 52 00 (Agreement), however, Design-Build Entity shall deliver to County the executed agreements, forms, bonds, and insurance documents required by Document 00 21 16 (Request for Qualifications and Proposal – Instructions to Proposers) in the required quantities and within the required times. A Notice to Proceed may be given at any time within thirty (30) Days after the County's execution of Document 00 52 00 (Agreement). See also Article 15 (Time Allowances) of this Document 00 72 53 (General Conditions).
- 3.1.2 Design-Build Entity shall start to perform the Work on the date when the Contract Time commences to run, but no work shall be done at the Site prior to the date on which the Contract Time commences to run and Design-Build Entity's required insurance is effective.

3.2 Mobilization.

- 3.2.1 Mobilization includes moving onto the Site of all plant and equipment; furnishing and erecting plants, temporary buildings, and other construction facilities; all as required for the proper performance and completion of the Work. Mobilization shall be undertaken in compliance with the requirements of the Contract and any staging plan approved by the County and shall include, but not be limited to, the following principal items:
- 3.2.1.1 Moving onto the Site Design-Build Entity's plant and equipment as required.
- 3.2.1.2 Installing temporary construction power and wiring.
- 3.2.1.3 Establishing fire protection system for its temporary facilities.
- 3.2.1.4 Developing construction water supply.
- 3.2.1.5 Providing field office trailers for Design-Build Entity with all Specified furnishings and utility services including telephones and internet. Design-Build Entity may locate its field office trailers in the area between existing buildings "A" and "B" for the duration of the Project.

- 3.2.1.6 Providing connections to On-Site sanitary facilities and potable water facilities as Specified or providing portable toilets/port-a-potties as needed.
- 3.2.1.7 Arranging for and erection of Design-Build Entity's work and storage yard(s).
- 3.2.1.8 Submittal to the County of all required Subcontractor insurance certificates and bonds, if required.
- 3.2.1.9 Posting all OSHA required notices and establishment of safety programs.
- 3.2.2 Within fifteen (15) Days following issuance by the County of a Notice of Award for design and preconstruction services through Final GMP, Design-Build Entity shall submit to the County, for its review and concurrence, a "Mobilization Plan" including an initial schedule and staffing plan for both design-side staff and construction-side staff. The same plan must be submitted fifteen (15) Days following issuance by the County of Notice to Proceed for the remaining design, preconstruction, and construction phases.
 - 3.2.2.1 The Mobilization Plan is subject to review and concurrence by the County prior to, and as a condition precedent to, execution of the Contract.
 - 3.2.2.2 The Mobilization Plan shall be developed in both narrative and graphic format, and shall include, at a minimum, the following:
 - 3.2.2.2.1 Initial design activities, which include but are not limited to establishing On-Site office space for design personnel, implementing an online project management system, and verifying existing Site conditions and utilities.
 - 3.2.2.2.2 Initial construction activities, which include but are not limited to interior and exterior demolition, any proposed Site excavation and perimeter structural shoring, parking and traffic control, temporary facilities and staging, followed by construction of interior improvements.
 - 3.2.2.2.3 A detailed sequential plan for commencement of interior construction consistent with the scheduling requirements of the Contract Documents for all design, demolition, construction, and other activities to be undertaken during the first sixty (60) Days following execution of the Contract.

4. BONDS AND INSURANCE.

4.1 Bonds.

- 4.1.1 Within the time period specified in Document 00 21 16 (Request for Qualifications and Proposal – Instructions to Proposers), Design-Build Entity

shall provide to the County two (2) bonds pursuant to Paragraphs 4.1.1.1 and 4.1.1.2.

4.1.1.1 **Performance Bond.** For all of the Work, provide one (1) Admitted Surety Insurer bond in the form set forth in Document 00 61 13.13 (Performance Bond) to guarantee faithful performance of all Work, including bonds, insurance, permits and fees under the Contract for the Work ("Performance Bond"). The Performance Bond shall be in an initial sum not less than one hundred percent (100%) of the amount of **the Work**, to be performed by Design-Build Entity under the Contract **in the amount of the Initial GMP/entire Contract Sum** and shall obligate the Design-Build Entity to faithfully perform and the Surety to guarantee not less than one hundred percent (100%) of the amount of the value of all Work for the entire Project.

4.1.1.2 **Payment Bond.** For all Phases of the Work, provide one (1) Admitted Surety Insurer bond in the form set forth in Document 00 61 13.16 (Payment Bond) to guarantee payment of wages for services engaged and of bills contracted for all design Work, demolition and Construction Work including, materials, supplies, and equipment used in performance of the Contract for **all of the Work**. In accordance with Civil Code § 9550 et seq., the Construction Labor and Material Payment Bond shall obligate a Surety to guarantee payment in an amount equal to the **entire Contract Sum** for the Project ("Payment Bond").

4.1.2 Corporate Admitted Surety Insurer issuing the Payment Bond and Performance Bond and issuing bonds accompanying Qualifications and Proposal must be duly licensed and legally authorized to engage in the business of furnishing surety insurance in the State of California. Sureties must be satisfactory to the County and shall have an A.M. Best Company financial rating of A-7 or better.

4.1.3 Design-Build Entity may invoice for the Performance Bond and Payment Bond premiums at the Fixed Percentage Rates For Indirect Costs Specified in the Agreement applied to the Initial GMP in the first application for payment after Contract award. In the event of increases in the Contract Sum Initial GMP by Change Orders, or otherwise, aggregating to five percent (5%) of the Contract Sum or more, and by all such subsequent increases in the Contract Sum thereafter, Design-Build Entity shall submit to the County evidence of additional bond coverage for such increases in the Contract Sum and Initial GMP. Design-Build Entity shall be compensated for such additional bond coverage at the Fixed Percentage Rate For Indirect Costs Specified in the Agreement.

4.2 Insurance.

4.2.1 See Document 00 73 16 (Insurance Requirements), incorporated herein by reference.

5. **DRAWINGS AND SPECIFICATIONS.**

5.1 Intent. The Contract Documents are complementary; what is called for by one is as binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project and individual systems therein to be designed and constructed in accordance with the requirements of the Contract Documents. Any Work, materials, or

equipment that may reasonably be inferred from the requirements of the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result shall be furnished and performed whether or not specifically required. When words, phrases, or abbreviations, which have a well-known technical or construction industry or trade meaning are used to describe Work, materials, or equipment, such words, phrases, or abbreviations shall be interpreted in accordance with that meaning. Any non-technical words, phrases, or abbreviations shall be interpreted in accordance with their commonly understood meanings.

- 5.2 Drawing Details and Specification Descriptions. The Criteria Documents along with the County accepted Drawings and Specifications (prepared in conformance with the most current edition of CSI Master Format) of the Construction Documents establish performance criteria the final design and construction must meet and, along with the warranty and other requirements in the Contract Documents, establish the minimum design, material, quality, workmanship, and other standards required under the Contract Documents. Design-Build Entity has full responsibility to deliver the fully functional, operational Project described in Document 01 11 10 (Summary of Work) as referenced in the Contract Documents (“Turnkey Basis”).
- 5.3 Specifications and Drawings Do Not Control Division of Work. The Divisions and Sections of the Specifications and the identifications of any Drawings shall not control Design-Build Entity in dividing the Work among Subcontractors or suppliers or delineating the Work to be performed by any specific trade.
- 5.4 Interpretation of Contract, Drawings and Specifications.
- 5.4.1 Should any discrepancy or ambiguity appear or any misunderstanding arise as to the importance of anything contained in the Contract and the Drawings and Specifications included in the Project Manual Documents, the matter shall be referred to the County, who shall issue with reasonable promptness so as not to delay Design-Build Entity’s performance such written clarifications or interpretations of the requirements, which shall be consistent with the intent of and reasonably inferable from the Project Manual Documents. Reasonable promptness may vary with each issue; however, it is the goal of the County to respond in no longer than five (5) Business Days. It is the intent of the Project Manual Documents that Design-Build Entity shall have responsibility to provide a complete and comprehensive design (and construction thereof) for the Project in order to allow a complete and fully operational Project on a Turnkey Basis. The County’s review of Design-Build Entity’s designs, Shop Drawings, samples, submittals, and Construction Documents shall not relieve Design-Build Entity of its responsibility for a complete design complying with the requirements of the Project Manual Documents; but rather, such review shall be in furtherance of the County’s monitoring and accepting the design as developed and issued by Design-Build Entity, consistent with the Project Manual Documents.
- 5.4.2 The Project Manual Documents may omit modifying words such as “all” and “any,” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference

thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

- 5.4.3 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender and each shall include corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.
- 5.4.4 Design-Build Entity shall submit to the County requests for information ("RFIs") as Design RFIs ("DRFIs"). County shall submit to Design-Build Entity requests for information as Owner RFIs ("ORFIs").
- 5.4.5 Design-Build Entity's internal RFI process shall include identifying to the County any internal RFIs that will impact performance or program requirements, functionality, durability, maintenance, and finish appearance.
- 5.5 Checking/Updating of Drawings. Design-Build Entity shall develop the final design and Construction Documents for the Work and, thereafter, during design and construction, shall continuously check such Drawings and Specifications for conformance to actual conditions and update such Drawings to maintain complete and current As-Built Drawings as construction progresses.
- 5.6 Necessary and Incidental Work. Design-Build Entity shall perform reasonably implied parts of Work as "incidental work" although absent from Drawings and Specifications. Incidental work includes any work not shown on Drawings or described in Specifications that is normally or customarily required as a part of the Work shown on Drawings or described in Specifications. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and the expense of incidental work shall be included in price Proposals and Contract Sum.
- 5.7 Standards to Apply Where Detailed and/or Performance Specifications Are Not Furnished. Wherever in the Contract Documents, or in any orders given by the County, it is provided that Design-Build Entity shall furnish materials or manufactured articles or shall do work for which no detailed Specifications are set forth, the following general specifications shall apply.
 - 5.7.1 Design and construction shall meet the standards required by the Contract Documents to provide the County with a fully functional Project, designed and constructed in a manner consistent with the standards, equipment, materials, and design, found in comparable, fully functional, contemporary facilities.
 - 5.7.2 Materials or manufactured articles shall be of the grade, in quality and workmanship, consistent with the requirements of the Contract Documents and obtainable in the market from firms of established good reputation, or, if not ordinarily carried in stock, shall conform to the usual standards for materials or articles of the kind required, with due consideration of the use to which they are to be put. The Work for which no detailed specifications are set forth herein shall conform to the requirements of this Paragraph 5.7. All such Work shall be consistent with the Contract Documents.

- 5.8 Order of Precedence of Contract Documents. In the case of an inconsistency within the Contract Documents not clarified by Addendum, the more stringent, higher quality, and greater quantity of Work shall be provided in accordance with the County's interpretation. In the event none of the Contract Documents place a more stringent, higher quality, or greater quantity of Work, the controlling provision shall be that which is found in the document with higher precedence in the following order of precedence:
- 5.8.1 Modifications in inverse chronological order, and in the same order as specific portions they are modifying (i.e., later-issued language shall take precedence and prevail over earlier conflicting versions or language).
 - 5.8.2 Signed Document 00 52 00 (Agreement).
 - 5.8.3 Document 00 73 13 (Special Conditions).
 - 5.8.4 Document 00 72 53 (General Conditions).
 - 5.8.5 Project Manual Division 00 Proposing (Documents 00 21 16 through 00 45 45A) and Contracting Requirements (Documents 00 51 00 through 00 65 36).
 - 5.8.6 Project Manual Division 01 General Requirements (as modified, if at all, by Document 00 52 00 (Agreement)).
 - 5.8.7 Criteria Documents. In the event of a conflict or ambiguity between any term, condition, or provision in the Final GMP Proposal and the Criteria Documents, the Criteria Documents shall control, unless modified and expressly approved in writing by the County during the proposal and/or design phase.
 - 5.8.8 The Construction Documents after having been accepted by the County and approved by all AHJs for all required permits. The Construction Documents will supplement and enhance, but not supplant, the Contract Documents with higher precedence, unless modified and expressly approved in writing by the County during the proposal and/or design phase. If a conflict is later discovered between such Contract Documents and the Construction Documents, the more stringent, higher quality, and greater quantity of Work shall be provided in accordance with the County's interpretation, unless modified and expressly approved in writing by the County during the proposal and/or design phase. In the event none of the Contract Documents place a more stringent, higher quality, or greater quantity of Work, the controlling provision shall be that which is found in the document with the higher precedence and shall prevail in the order listed above unless the Owner has explicitly agreed in writing to specific revisions or deviations to such Contract Documents.
 - 5.8.9 Design-Build Entity's Qualifications and Proposals defined in Document 00 52 00 (Agreement) excluding any portions inconsistent with the Agreement and Performance Criteria Documents, unless modified and expressly approved in writing by the County during the proposal and/or design phase.
 - 5.8.10 Written numbers over figures, unless obviously incorrect.
 - 5.8.11 Figured dimensions over scaled dimensions.

- 5.8.12 Large-scale Drawings over small-scale Drawings.
- 5.8.13 Any conflict between Drawings and Division 2 through 48 Specifications will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
- 5.8.14 Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete the Work required by Contract Documents will be resolved in favor of the actual quantities.
- 5.8.15 If there is any discrepancy or ambiguity concerning the character, nature, quality, or quantity of Work, product, system, or materials required under the Contract Documents, Design-Build Entity shall (1) immediately bring such discrepancy or ambiguity to the attention of the County and (2) without regard to the order of precedence above, provide the better quality of or greater quantity of Work or materials, without an increase in the Contract Sum, unless otherwise ordered by the County.
- 5.8.16 If there is any discrepancy or ambiguity between a Specified material, product, or system name or description and the model name, number, or code, the conflict will be resolved in favor of the description or name.

5.9 Design Deliverables, Shop Drawings, and Submittals to be Furnished by Design-Build Entity in Addition to Completed Design Drawings.

- 5.9.1 Design-Build Entity shall submit to the County for review a schedule of all Design Deliverables required in Document 01 11 14 (Summary of Work - Design Services, Preconstruction Activities, and Deliverables), identifying each required deliverable and the date on which it will be submitted to the County ("Schedule of Deliverables"). A preliminary Schedule of Design Deliverables will be submitted within sixty (60) Days of the Notice to Proceed. The County understands that a more complete Schedule of Deliverables will not be available until the beginning of the Construction Documents Phase as defined in Document 01 11 14 (Summary of Work - Design Services, Preconstruction Activities, and Deliverables). A more complete Schedule of Deliverables will be submitted to the County when the final design is submitted to the County at the end of the Design Development Phase as defined in Document 01 11 14 (Summary of Work - Design Services, Preconstruction Activities, and Deliverables).
- 5.9.2 Due to the design-build nature of the Project, Design-Build Entity and the County will jointly develop a list of submittals and Shop Drawings, which are to be submitted to the County. In accordance with Document 01 33 00 (Submittal Procedures), Design-Build Entity shall submit to the County for review a preliminary schedule of Shop Drawings and submittals ("Schedule of Submittals"), which will list each required submittal in order by Specification section and the times for submitting, reviewing, and processing such submittal. A preliminary Schedule of Submittals will be submitted within sixty (60) Days of the Notice to Proceed. The County understands that a more complete Schedule of Submittals will not be available until sixty (60) Days after approval of one hundred percent (100%) Construction Drawings or final Bid Package procurement, whichever is later. Design-Build Entity will endeavor to provide updated partial Schedules of Submittals as available every sixty (60) Days

through the course of the Project. Shop drawings and submittals shall be in addition to Design-Build Entity's design developed pursuant to the Contract.

- 5.9.3 Design-Build Entity shall submit submittals, product data, Samples, and Shop Drawings to the County for review in strict accordance with Document 01 33 00 (Submittal Procedures). Shop Drawings means drawings submitted to Design-Build Entity by subcontractors, manufacturers, supplier, or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment. Submission of a submittal or Shop Drawing shall constitute Design-Build Entity's representation that it has complied with all requirements of Document 01 33 00 (Submittal Procedures). All submittals and Shop Drawings will be identified as the County may require and made in the number of copies specified in Document 01 33 00 (Submittal Procedures). Design-Build Entity shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and Design-Build Entity's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review. Design-Build Entity shall submit Shop Drawings and samples that relate to finish materials and products approved by the Architect of Record.
- 5.9.4 Shop Drawings, product data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Work for which submittals are required, how Design-Build Entity proposes to conform to the information given and the design concept expressed in the Contract Documents. Design-Build Entity shall review, approve, and submit to the County's Representative Shop Drawings, product data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of County or of Separate Contractors. Submittals made by Design-Build Entity that are not required by the Contract Documents may be returned without action by County. Design-Build Entity shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been reviewed by County's Representative and no exceptions have been taken by the County's Representative. Such Work shall be in accordance with approved Submittals and the Contract Documents. By approving and submitting Shop Drawings, product data, Samples, and similar submittals, Design-Build Entity represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents and Shop Drawings for related Work.
- 5.9.5 If Design-Build Entity discovers any conflicts, omissions, or errors in Shop Drawings or other Submittals, Design-Build Entity shall notify the County's Representative and receive instruction before proceeding with the affected Work. Design-Build Entity shall be responsible to correct to the satisfaction of the County any conflicts, omissions, or errors in Shop Drawings or other submittals.
- 5.9.6 Design-Build Entity shall not be relieved of responsibility for deviations from requirements of the Contract Documents by County's Representative's review of Shop Drawings, product data, Samples, or similar submittals, unless Design-Build Entity has specifically informed the County's Representative in writing of

such deviation at the time of submittal and the County's Representative has given written approval of the specific deviation as Field Change Directive, a Change Order, or Construction Change Directive. Design-Build Entity shall not be relieved of responsibility for errors or omissions in Shop Drawings, product data, Samples, or similar submittals by County's Representative's review, acceptance, comment, or approval thereof.

Design-Build Entity shall direct specific attention, in writing or on resubmitted Shop Drawings, product data, Samples, or similar submittals, to revisions other than those requested by County's Representative on previous submittals. The County will review first resubmittal of Shop Drawing at its cost. The County reserves the right to reduce the Contract Sum by Change Order for its cost for any subsequent reviews of Shop Drawings, Product Data, or other resubmittals.

- 5.9.7 Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in the Work as the standard. Any variation in quality must be approved by the County.
- 5.9.8 Materials and equipment incorporated in the Work shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.
- 5.9.9 Design-Build Entity shall not perform Work requiring submission of a submittal, Product Data, Samples, or Shop Drawing prior to submission and favorable review by the County of the Submittal or Shop Drawing. The County's review of submittals or Shop Drawings shall be performed so as not to delay Design-Build Entity's performance. Where a submittal or Shop Drawing is required by the Contract Documents or Shop Drawings to be accepted by the County, or by Design-Build Entity's Architect or associated engineer, any related Work performed prior to favorable review of the pertinent submittal or Shop Drawing will be at the sole expense, responsibility, and risk of Design-Build Entity. The County's review of Shop Drawings, Samples, and submittals shall not relieve Design-Build Entity of its responsibility for a complete design complying with the requirements of the Contract Documents; but rather, such review shall be in furtherance of the County's monitoring and accepting the design as developed and issued by Design-Build Entity, consistent with these Contract Documents.

5.10 Construction Documents.

- 5.10.1 Upon receipt of the Notice to Proceed with Phase II Work, Design-Build Entity shall instruct the Architect to commence the design of the building systems and the preparation of the Construction Documents. The Construction Documents, as defined in Document 01 42 00 (References and Definitions), shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the Construction Work of the Project, other than such details customarily developed by others during construction. The County's review of the Construction Documents shall be conducted in accordance with the approved Project Master Schedule with procedures set forth in the Contract Documents. Such review shall not relieve Design-Build Entity from its responsibilities under the Contract Documents. Such review shall not be deemed an approval or waiver by the County of any deviation from, or of Design-Build Entity's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has

been identified as such in writing in the document submitted by Design-Build Entity and approved in writing by the County.

- 5.10.2 The parties hereto acknowledge that inherent in a design build scope of work and or exhibits or otherwise, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times.

Design-Build Entity will limit the Construction Document Bid Packages for Construction Work, including any deferred approval packages, to a reasonable number, consistent with the Standard of Care, as approved by the Regulatory Agency. The Project Master Schedule shall indicate the times for the County to review the completion of each such portion of the Construction Documents prior to submittal to the Regulatory Agency and a reasonable time for Regulatory Agency review of same.

- 5.10.3 Design-Build Entity shall submit completed Bid Packages of the Construction Documents for review by the Regulatory Agency, the State Fire Marshall, as required, and other AHJs at the times indicated on the Project Master Schedule and as defined in the Scheduling Specification. Review meetings between Design-Build Entity and Regulatory Agency to review the Construction Document Bid Packages shall be scheduled and held so as not to delay the Work.

- 5.10.4 The Construction Documents for hazardous and/or toxic abatement efforts or other hazardous materials and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to the County for review.

- 5.10.5 Design-Build Entity shall retain and pay expenses of a civil engineer or land surveyor to establish on the Site the required primary control points, including but not limited to benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be licensed in the State of California. Subsequent surveying and layout may be performed by Design-Build Entity's qualified personnel.

- 5.10.6 Design-Build Entity shall locate and protect all control points, including primary control points prior to starting Work on the Project Site and preserve permanent reference points during construction and shall require the engineer or surveyor to replace control points which become lost or destroyed.

- 5.10.7 In accordance with California Government Code § 4216 et seq., Design-Build Entity shall verify the location and depth (elevation) of all existing utilities and services that are known or can be inferred from the presence of other visible facilities on or adjacent to the Project Site, before performing any excavation Work.

6. CONSTRUCTION BY THE COUNTY OR BY SEPARATE CONTRACTORS.

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

- 6.1.1 For the purpose of this Paragraph 6.1 alone, the "County" refers to and includes the County Facility.

- 6.1.2 The County may perform with its own forces, construction or operations related to the Project. The County may also award separate contracts in connection with other portions of the Project or other construction or operations, on the Site or areas contiguous to the Site, under conditions similar to these Contract Documents, or may have utility owners perform other work.
- 6.1.3 When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate County/Contractor Contract.
- 6.1.4 County's Right to Carry Out the Work. If Design-Build Entity defaults or fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the design or construction phases, fails to maintain the Project Master Schedule or Construction Schedule, or otherwise fails to comply with any material term of the Contract Documents, and fails within two (2) Business Days after receipt of written notice from the County to promptly commence and thereafter diligently continue to completion the correction of such failure, the County may, without prejudice to other remedies the County may have, correct such failure at Design-Build Entity's expense. In such case, the County will be entitled to deduct from payments then or thereafter due Design-Build Entity the cost of correcting such failure, including compensation for the additional services and expenses of the County made necessary thereby. If payments then or thereafter due Design-Build Entity are not sufficient to cover such amounts, Design-Build Entity shall pay the additional amount to the County.
- 6.1.5 When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, County shall notify Design-Build Entity of such separate contracts before work on the Site pursuant to those contracts begins. County shall give such notice to Design-Build Entity with enough time to reasonably allow Design-Build Entity to coordinate as required by Paragraph 6.2 (Mutual Responsibility) below.

6.2 Mutual Responsibility.

- 6.2.1 Design-Build Entity shall afford all other separate contractors, utility owners, and the County (if the County is performing work with its own forces), proper and safe access to the Site, including such access to other lands and facilities designated in the Contract Documents for use by Design-Build Entity and reasonable opportunity for the installation and storage of their materials, shall ensure that the execution of its Work properly connects and coordinates with their work, and shall cooperate with them to facilitate the progress of the Work.
- 6.2.2 Design-Build Entity shall coordinate its Work with the work of other separate contractors, the County, and utility owners, including, at a minimum, holding monthly coordination meetings with them. The County shall have the right to participate in these coordination meetings and shall be advised of the results of these coordination meetings at the monthly Progress Meeting.
- 6.2.3 Unless otherwise provided in the Contract Documents, Design-Build Entity shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Design-Build Entity shall not endanger any work of others by cutting, excavating,

or otherwise altering their work and will only cut or alter their work with the written consent of the County and the others whose work will be affected.

- 6.2.4 The duties and responsibilities of Design-Build Entity under Paragraphs 6.2.1 through 6.2.3 above are for the benefit of the County and also for the benefit of such utility owners and other contractors working at the Site.
- 6.2.5 To the extent that any part of Design-Build Entity's Work is to interface with the work performed or installed by others, Design-Build Entity shall inspect and measure the in-place work and promptly report in writing to the County any defect in such in-place work that will impede or increase the cost of Design-Build Entity's interface unless corrected. The County will require the contractor responsible for the defective work to make corrections so as to conform to the Contract Documents. If Design-Build Entity fails to measure, inspect and/or report defects that are reasonably discoverable, all costs of accomplishing the interface acceptably shall be borne by Design-Build Entity. This provision shall be included in any and all other contracts or subcontracts for the Work to be performed where such a conflict could exist.

6.3 County Authority Over Coordination.

- 6.3.1 The County shall have authority over coordination of the activities of multiple contractors in those cases where the County contracts with others for the performance of other work on the Project, the County performs work with its own forces, or utilities perform work on the Site. (The authority of the County with respect to coordination of the activities of multiple prime contractors and utility owners, however, shall not in any manner relieve Design-Build Entity of its obligation to other contractors and utility owners to coordinate its Work with utility owners and other contractors as specified above.) Design-Build Entity shall promptly notify the County in writing when another contractor on this Project fails to coordinate its work with the Work of the Contract.
- 6.3.2 Design-Build Entity shall suspend any part of the Work herein Specified or shall carry on the same in such manner if directed by the County when such suspension or prosecution is necessary to facilitate the work of other contractors or workers. No damages or Claims, as defined in Article 12 (Claims by Design-Build Entity) below, by Design-Build Entity will be allowed therefore to the extent the suspension or work change is due to Design-Build Entity's failure to perform its obligation to coordinate its work with utility owners and other contractors. If the suspension or work change is due in whole or in part to the failure of another County employed contractor to coordinate its work with Design-Build Entity and other contractors and utility owners, then resulting damages or Claims by Design-Build Entity will be allowed. The County reserves the right to backcharge Design-Build Entity for any damages or claims of other contractors incurred as a result of Design-Build Entity's failure to perform its obligations to coordinate its Work with other contractors and utility owners, and in its discretion, the County may deposit the funds retained with a Court of competent jurisdiction pursuant to applicable interpleader procedures and Design-Build Entity releases the County of any further liability regarding such funds.
- 6.3.3 The County may at any time and in its sole discretion, designate a person, firm, or corporation other than the County, to have authority over the coordination of the activities among the other contractors.

7. **THE COUNTY AND PAYMENT.**

7.1 The County's Representatives.

- 7.1.1 The designated authorized representative(s) of the County or the County's Project Manager will provide limited administration of the Contract as provided in the Contract Documents and will have limited authority to act on behalf of the County as set forth in the Contract Documents.
- 7.1.2 The County shall designate in the Contract Documents or otherwise in writing, from time to time, one or more County Representatives authorized to act on the County's behalf with respect to the Project, together with the scope of his/her/their respective authority (referred to herein as "County's Representative" or "County Representative"). Functions that the Contract provides will be performed by the County may be delegated by the County to its Representative only by written notice to Design-Build Entity from the County. Design-Build Entity shall not be entitled to rely on directions (nor shall it be required to follow the directions) from anyone outside the scope of that person's authority as set forth in written authorization pursuant to the Contract. Directions and decisions made by the County's Representatives within the scope of this authorization shall be binding on the County.
- 7.1.3 During the term of the Contract, the County's Representative shall have the right to review Design-Build Entity's design professionals' Work at such intervals as deemed appropriate by the County Representative. However, no actions taken during such review or Site visit by the County Representative shall relieve Design-Build Entity of any of its obligations of single-point responsibility for the design and construction of this Project nor form the basis for a Claim if such actions extend the Contract Final Completion beyond the Contract Time.
- 7.1.4 The County's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, since these are solely Design-Build Entity's responsibility.
- 7.1.5 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the County and Design-Build Entity shall communicate through the County's Representative. Communications by Design-Build Entity with County's consultants and County's Representative's consultants shall be through the County's Representative. Communications by the County and the County's Representative with Subcontractors will be through Design-Build Entity. Communications by Design-Build Entity and Subcontractors with Separate Contracts shall be through County's Representative. Should any direct communications between Design-Build Entity and County's consultants, architects, or engineers not identified in Article 2 of Document 00 52 00 (Agreement) occur during field visits or by telephone, Design-Build Entity shall immediately confirm them in a written document copied to the County. Design-Build Entity shall not rely on oral or other non-written communications.
- 7.1.6 Based on the County's Representative Project Site visits, review of Design Work, and evaluations of Design-Build Entity's "Application(s) for Payment" in accordance with the requirements of as required by Paragraph 1.7.3 of

Document 01 29 00 (Payment Procedures), the County's Representative will recommend amounts, if any, due Design-Build Entity and will issue payment in such amounts.

- 7.1.7 The County's Representative will have the authority to reject the Work, or any portion thereof, which does not conform to the Contract Documents. The County's Representative will have the authority to stop the Work, or any portion thereof whenever the County's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents. The County's Representative will have the authority to require additional inspection or testing of the Work in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed.

However, no authority of the County's Representative conferred by the Contract Documents, nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility, of the County or the County's Representative to Design-Build Entity, or any person or entity claiming under, or through, Design-Build Entity. The County's Representative (a) will have the authority to conduct inspections in connection with any Beneficial Occupancy pursuant to Paragraph 13.25 (Beneficial Occupancy) below, and to determine the dates of Substantial Completion, and Final Completion; (b) will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by Design-Build Entity; and (c) will issue a final Certificate For Payment upon Design-Build Entity's compliance with the requirements of the Contract Documents.

- 7.1.8 The County's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by Design-Build Entity. Should Design-Build Entity discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether the Work is within the scope of the Contract Documents; then, before proceeding with the Work affected, Design-Build Entity shall notify the County's Representative in writing and request interpretation, or clarification. The County's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should Design-Build Entity proceed with the Work affected before receipt of a response from the County's Representative, any portion of the Work which is not done in accordance with the County's Representative interpretations, clarifications, instructions, or decisions shall be removed or replaced at the direction of the County's Representative and Design-Build Entity shall be responsible for all resultant costs.

7.2 Means and Methods of Design and Construction.

- 7.2.1 Subject to those rights specifically reserved in the Contract Documents, the County shall not supervise, direct, or have control over, or be responsible for, Design-Build Entity's design or means, methods, techniques, sequences, or procedures of construction or for the safety precautions and programs incident thereto, or for any failure of Design-Build Entity to comply with laws and regulations applicable to the furnishing or performance of the Work.

7.2.2 The County shall not be responsible for Design-Build Entity's failure to perform or furnish the Work in accordance with Contract Documents.

7.3 Receipt and Processing of Applications for Payment. As required by Document 01 29 00 (Payment Procedures), Design-Build Entity shall prepare and submit Applications for Payment and warrant title to all Work covered by each Application for Payment. The County will require of Design-Build Entity all payment information required by any participating State of California agencies. The County will review Design-Build Entity's Applications for Payment and make payment thereon, and Design-Build Entity shall make payments to Subcontractors, subconsultants suppliers and others, as required by Document 01 29 00 (Payment Procedures).

8. CONTROL OF THE WORK.

8.1 Supervision of Work by Design-Build Entity.

8.1.1 Design-Build Entity shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such personal skills and expertise as may be required and necessary to perform the Work in accordance with the Contract Documents. Design-Build Entity shall be solely responsible for the design and means, methods, techniques, sequences, and procedures of construction and for the safety precautions and programs incident thereto. Design-Build Entity shall be responsible for ensuring that the completed Work complies accurately with the Contract Documents.

8.1.2 Design-Build Entity shall keep on the Site at all times during Work progress on the Site a competent resident "Superintendent", who shall not be replaced without the express written consent of the County. The Superintendent may not perform the Work of any trade, pick-up materials, or perform any Work not directly related to the supervision and coordination of the Construction Work at the Project Site when Work is in progress. The Superintendent shall be Design-Build Entity's representative at the Site and shall have complete authority to act on behalf of Design-Build Entity. All communications given to, and received from, the Superintendent shall be as binding on Design-Build Entity. Failure to maintain a Superintendent on the Project at all times Work is in progress shall be considered a material breach of the Contract, entitling the County to terminate the Contract or, alternatively, issue a stop Work order until the Superintendent is on the Site.

8.1.3 Design-Build Entity shall have and maintain at the Site a full-time "Quality Control Manager", as Specified in Paragraph 1.4 of Document 01 45 00 (Quality Control and Assurance) and a full-time project manager whose duties shall include providing a quality control document to the County that the Work has been reviewed and either found to meet the terms and conditions of the Contract Documents or has been found deficient and corrective action will be taken promptly.

8.2 Observation of Work by County. The County may observe and monitor the design and construction through its agents, employees, consultants, or others. Design-Build Entity in no way is relieved of any responsibility by the activities of the County in this regard.

8.3 Access to Site. During performance of Work, the County and its respective agents, representatives, consultants, and employees may at any time enter upon the Site, shops or offices where any part of Work may be in preparation, or factories where any materials

for use in Work are being or are to be manufactured, and Design-Build Entity shall provide proper and safe facilities therefore, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as the County's interests may require. Other contractors performing work for the County may also, for all purposes required by their respective contracts, enter upon the Site. Furthermore, Design-Build Entity shall permit the Regulatory Agency, or its authorized agents, to have access to the Project staff and facilities whenever Project activities are in progress and ensure that Design-Build Entity will provide proper facilities for access, monitoring, and inspection.

8.4 Existing Utilities. Drawings may indicate above and below grade structures, drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities, and additional information may be on file with the County and/or the regional notification center Underground Service Alert ("USA"). Design-Build Entity shall locate these known existing installations before proceeding with trenching or other operations that may cause damage, shall maintain them in service where appropriate, and shall repair any damage to them caused by the Work, at no increase in Contract Sum. Additional utilities whose locations are unknown to the County are suspected to exist. Design-Build Entity shall be alerted to their existence; if they are encountered, Design-Build Entity shall immediately report to County for disposition of the same. In addition to reporting if any utility is damaged, Design-Build Entity shall take appropriate action as provided in this Document 00 72 53 (General Conditions). Additional compensation or extension of time on account of utilities not shown or otherwise brought to Design-Build Entity's attention, including reasonable action taken to protect or repair damage, shall be determined as provided in this Document 00 72 53 (General Conditions).

8.4.1 At no additional cost to the County, Design-Build Entity shall incorporate into the Work main or trunk line utilities identified in the Contract Documents and other utilities or underground structures known or reasonably discernible and that will remain in service, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Design-Build Entity shall take immediate action to restore any in-service installations damaged by Design-Build Entity's operations. Should the County determine that Design-Build Entity has not responded in a timely manner or not diligently pursued completion of the Work, the County may restore service and deduct the costs of such action by the County from the amounts due under the Contract.

8.4.2 Consistent with Government Code § 4215, as between the County and Design-Build Entity, the County will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents. The County will compensate for the cost of locating and repairing damage not due to Design-Build Entity's failure to exercise reasonable care, in the removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents with reasonable accuracy, and equipment on the Project necessarily idled during such work.

8.4.3 Prior to performing Work at the Site, Design-Build Entity shall lay out the locations of known underground utilities that are to remain in service and other significant known underground installations. At no additional cost to the County, prior to commencing other Work in proximity to such known underground utilities or installations that can be readily inferred from adjacent surface improvements, Design-Build Entity shall further locate, by carefully excavating with small equipment, potholing and principally by hand, such utilities or installations that

are to remain and that are subject to damage. This obligation applies to all utilities.

- 8.4.4 Nothing in this Document 00 72 53 (General Conditions) shall be deemed to require the County to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred by Design-Build Entity from the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters, and junction boxes, on or adjacent to the Site. Design-Build Entity shall immediately secure all available information and notify the County and utility, in writing, of its discovery, while performing Work under the Contract Documents, of any utility facilities not identified in the Drawings and Specifications.

8.5 Underground Facilities.

- 8.5.1 Before commencing work of digging trenches or excavation, Design-Build Entity shall review all information available regarding subsurface conditions, including but not limited to information supplied in Document 00 31 32 (Geotechnical Data and Existing Conditions), and subject to the terms and conditions of these documents, Design-Build Entity shall also comply with Government Code §§ 4216 through 4216.910 and in particular § 4216.2 https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=4216.2. which provides, in part:

(b) Except in an emergency, an excavator planning to conduct an excavation shall notify the appropriate regional notification center of the excavator's intent to excavate at least two working days, and not more than 14 calendar days, before beginning that excavation. The date of the notification shall not count as part of the two-working-day notice. If an excavator gives less notice than the legal excavation start date and time and the excavation is not an emergency, the regional notification center will take the information and provide a ticket, but an operator has until the legal excavation start date and time to respond. However, an excavator and an operator may mutually agree to a different notice and start date. The contact information for operators notified shall be available to the excavator.

(c) When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation to set up an onsite meeting prior to the legal excavation start date and time or at a mutually agreed upon time to determine actions or activities required to verify the location and prevent damage to the high priority subsurface installation. As part of the meeting, the excavator shall discuss with the operator the method and tools that will be used during the excavation and the information the operator will provide to assist in verifying the location of the subsurface installation. The excavator shall not begin excavating until after the completion of the onsite meeting.

- 8.5.2 Design-Build Entity shall contact USA/8-1-1 and schedule the Work to allow ample time for the center to notify its members and, if necessary, for any member

to field locate and mark its facilities. Design-Build Entity is charged with knowledge of all subsurface conditions reflected in USA records. Prior to commencing excavation or trenching work, Design-Build Entity shall provide County with copies of all USA records secured by Design-Build Entity. Design-Build Entity shall advise County of any conflict between information provided in Document 00 31 32 (Geotechnical Data and Existing Conditions), the Drawings, and that provided by USA records. Design-Build Entity's excavation shall be subject to and comply with the Contract Documents, including without limitation Article 2 (Scope of Design Build Responsibility) and Paragraph 8.4 (Existing Utilities) of this Document 00 72 53 (General Conditions).

- 8.5.3 In the case of any Underground Facilities that are located on County property and are used to furnish services on the County property or are under the operation and control of the County, or in any other case in which the USA does not provide a ticket and notify its members that have subsurface installations of the area of the proposed excavation, then Design-Build Entity shall be fully responsible for locating the Underground Facilities and protecting such Underground Facilities during excavation. In locating the Underground Facilities, Design-Build Entity shall investigate all records available at the County and all other records available to it relative to the location of such Underground Facilities and shall make use of all necessary industry locating techniques and/or engage qualified locating service to perform such services for Design-Build Entity. Design-Build Entity shall undertake no excavation work until such time that the Underground Facilities are located, and field marked or determined not to be in the area of excavation. Thereafter, subject to any further requirements in the Contract Documents, Design-Build Entity shall determine the exact location of the Underground Facilities by excavating with hand tools within the area of the location of the Underground Facilities.

Design-Build Entity shall provide the County with adequate prior written notice of its proposed excavation work in an area containing County owned Underground Facilities and shall submit for the County's approval its plan for locating and protecting the Underground Facility from damage due to the excavation work. The County's favorable review of such plan shall in no way limit or restrict the responsibility of Design-Build Entity under the Contract Documents and at law, and Design-Build Entity shall not rely on the County's review as a representation of the location of the Underground Facility, the suitability of the plan, or its compliance with law.

- 8.5.4 The cost of all of the following will be included in the Contract Sum and Design-Build Entity shall have full responsibility for (a) reviewing and checking all available information and data including, but not limited to, Document 00 31 32 (Geotechnical Data and Existing Conditions) and information on file at USA; (b) locating all Underground Facilities shown or indicated in the Contract Documents, available information, or indicated by visual observation including, but not limited to, and by way of example only, engaging qualified locating services and all necessary back-hoeing and pot-holing; (c) coordination of the Work with the owners of such Underground Facilities during construction; and (d) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- 8.5.5 If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by County or in information on file at USA or is otherwise reasonably available to Design-Build

Entity, then Design-Build Entity shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven (7) Days), and prior to performing any Work in connection therewith (except in an emergency as required by Paragraph 16.4 (Emergencies) of this Document 00 72 53 (General Conditions)), identify the owner of such Underground Facility and give written notice to that owner and to County. During such time, Design-Build Entity shall be responsible for the safety and protection of such Underground Facility.

8.5.6 Design-Build Entity shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility only where the Underground Facility:

8.5.6.1 Was not shown or indicated in the Contract Documents or in the information supplied pursuant to Document 00 31 32 (Geotechnical Data and Existing Conditions) or in information on file at USA; and could not be readily inferred from surface improvements, and

8.5.6.2 Design-Build Entity represents that it has taken the necessary steps to ascertain the nature, location and extent of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work, such as: (a) conditions bearing on transportation, disposal, handling, and storage of materials; (b) the availability of labor, water, power, and roads; (c) seasonal weather patterns; (d) observable physical conditions at the Project Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed, prior to and during the performance of the Work.

8.5.6.3 To the extent Design-Build Entity encounters subsurface conditions or hazardous materials which differ materially from that described in the Contract Documents, or actually known by Design-Build Entity, or differing from those ordinarily known or anticipated to exist, or could not have been reasonably discovered within the time permitted, or generally recognized as inherent in the area, then notice by Design-Build Entity must be immediately given to the County Representative, before conditions are disturbed, and in no event later than five (5) Business Days after the first observance of the conditions. Should any existing utilities or services be disturbed, disconnected, or damaged during construction, Design-Build Entity is responsible, at no additional cost of time to the County, for all expense and consequential damages of every type arising from such disturbance or the replacement or repair thereof and must repair such items as required to maintain continuing service, including emergency repairs. (For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, then an increase in the Contract Sum or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated in the Contract Documents, in the information supplied to Design-Build Entity pursuant to Document 00 31 32 (Geotechnical Data and Existing Conditions), in information on file at USA, or otherwise reasonably available to Design-Build Entity.)

8.5.7 Underground Facilities are inherent in construction involving digging of trenches or other excavations and Design-Build Entity is to apply its skill and industry to verify the information available. Underground Facilities are often in different locations and elevations that existing information indicates, and such differences shall constitute a differing site condition only if such difference is clearly material and is not discoverable through reasonable investigation.

9. **WARRANTY AND GUARANTEE; INSPECTION, CORRECTION, AND MAINTENANCE OF WORK.**

9.1 Warranty and Guarantee.

9.1.1 General Representations and Warranties: Design-Build Entity represents and warrants that it, and its Subcontractors of every tier are, and at all times will be, capable of performing every phase of the Work, and possesses or will timely obtain all necessary licenses and/or permits required to perform the Work, as necessary to complete the Work in accordance with the terms of the Contract Documents. Design-Build Entity warrants that all design, engineering, design related services, Construction Work, and construction services shall be performed in accordance with the Standard of Care described in Paragraph 2.2.4 herein. Design-Build Entity warrants to the County that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality and new (unless otherwise required or permitted by the Contract Documents), and all Work will be free of liens, claims, and security interests of third parties; that the Construction Work will be of the highest quality and free from defects, and that all Work will conform with the requirements of the Contract Documents. If required by the County, Design-Build Entity shall furnish satisfactory evidence of compliance with this warranty. Design-Build Entity warrants that the Work shall be fit for its intended purpose, watertight, and meeting current standards for work similar to the Project, shall be of suitable grade of its respective kind for its intended use, shall be free from defects in materials, construction, and workmanship, and shall conform in all respects with all applicable requirements of federal, state and local laws, licenses, and permits, the Drawings, Specifications, and all descriptions set forth therein, applicable construction codes and standards, and all other requirements of the Contract Documents including the Standard of Care specified herein. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Design-Build Entity shall furnish and provide the architectural and engineering services necessary to design the Project in accordance with the County's requirements, as outlined in County's Criteria Documents, and other relevant data defining the Project. Design-Build Entity shall cause the Work to conform in all respects with all applicable requirements of federal, state, and local laws, licenses, and permits, the Drawings, Specifications, and all descriptions set forth therein, applicable construction codes and standards, and all other requirements of the Contract Documents including the Standard of Care specified herein.

9.1.2 Standard Correction Guarantee. If within **two (2)** years after the date of Substantial Completion of the Work or designated Component thereof, or such longer period of time as may be prescribed by laws or regulations, or by the terms of the Contract Documents, any Work is found to be Defective, Design-Build Entity shall promptly, without cost to County and in accordance with County's written instructions, correct such Defective Work. Design-Build Entity shall remove any Defective Work rejected by County and replace it with Work

that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Design-Build Entity fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, County may have the Defective Work corrected or the rejected Work removed and replaced. Design-Build Entity shall pay for all claims, costs, losses, and damages caused by or resulting from such removal and replacement. Where Design-Build Entity fails to correct Defective Work, or defects are discovered outside the correction guarantee period, County shall have all rights and remedies granted by Contract Documents, law, and equity.

9.1.3 Extended Correction Guarantees: If any correction guarantee exceeding **two (2)** years is provided by the supplier or manufacturer of any equipment used in this Project, then Design-Build Entity shall use best efforts to assist the County in pursuing such extended guarantees for such materials. Design-Build Entity shall supply and assign to the County all warranty and guarantee documents relative to equipment and materials incorporated in the Project and guaranteed by its suppliers or manufacturers; see, however, Document 00 61 13.13 (Performance Bond) regarding the Surety's limit of its bond obligations including for extended correction guarantees.

9.1.4 Environmental and Toxics Warranty: The covenants, warranties, and representations contained in this Paragraph 9.1 (Warranty and Guarantee) are effective continuously during Design-Build Entity's Work on the Project and following cessation of labor for any reason including, but not limited to, Project Final Completion. Design-Build Entity covenants, warrants, and represents to County that:

9.1.4.1 No litigation is pending or, to Design-Build Entity's knowledge, proposed, threatened, or anticipated with respect to any matter affecting the Work of the Project or the operation thereof.

9.1.4.2 To Design-Build Entity's knowledge after due inquiry, no lead or asbestos-containing materials were Specified, installed, or were discovered in the Project at any time during Design-Build Entity's construction thereof. If any such materials were discovered, Design-Build Entity made immediate written disclosure to the County. Design-Build Entity shall provide a notarized letter to County attesting to this requirement.

9.1.4.3 To Design-Build Entity's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts, or other equipment containing PCBs are or were located on the Project at any time during Design-Build Entity's construction thereof. If any such materials were discovered, Design-Build Entity made immediate written disclosure to the County.

9.1.4.4 To Design-Build Entity's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substances are or were located on the Project at any time during Design-Build Entity's construction thereof except as required to be installed by the Contract Documents. If any such materials were discovered, Design-Build Entity made immediate written disclosure to the County.

9.1.4.5 Design-Build Entity's operations concerning the Project are not and were not in violation of any applicable Legal Requirements dealing with hazardous or toxic materials or substances, and no notice from any AHJ has been served upon Design-Build Entity claiming any violation of any such Legal Requirement, or requiring or calling attention to the need for, any work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply with any such Legal Requirement, with which Design-Build Entity has not complied. If there were or are any such notices, Design-Build Entity has provided or shall provide the County with copies thereof.

9.2 Inspection of Work.

9.2.1 All materials, equipment, and workmanship used in the Work shall be subject to inspection, testing, or evaluation at all times during construction and/or manufacture in accordance with the terms of the Contract Documents. Work and materials and manufacture and preparation of materials from beginning of construction until Final Completion and Final Acceptance of the Work, shall be subject to inspection and rejection by the County, its agents, or independent contractors retained by the County to perform inspection services, or by governmental agencies with jurisdictional interests.

Design-Build Entity shall provide such inspectors proper and safe conditions for such access and advise them of Design-Build Entity's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where Specified, the County shall be afforded access for inspection at the source of supply, manufacture, or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.

9.2.2 Design-Build Entity shall give the County forty-eight (48) hours' notice of readiness of the Work for all required inspections, tests, or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

9.2.3 If Legal Requirements of any AHJ require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such AHJ, Design-Build Entity shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, and furnish the County with the required certificates of inspection, or approval. The County retains the right to inspect, test, and evaluate the Work without relieving Design-Build Entity of its obligations under the Contract. The County will pay the cost of initial inspection and testing, and Design-Build Entity shall pay all costs in connection with any follow-up or additional inspections or testing. Design-Build Entity shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Design-Build Entity's purchase thereof for incorporation in the Work.

9.2.3.1 County reserves the right, in its sole discretion, also to conduct air monitoring, earth monitoring, Work monitoring, and any other tests to monitor Contract requirements of safe and statutorily compliant work methods with respect to hazardous waste or materials and, where applicable, safe re-entry level air standards under state and federal law

upon completion of the Work, and compliance of the Work with periodic and final inspection by AHJs.

- 9.2.3.2 Design-Build Entity acknowledges that County has the right to perform, or cause to be performed, various activities and tests including, but not limited to, pre-abatement, during abatement, and post-abatement air monitoring, that County shall have no obligation to perform said activities and tests, and that a portion of said activities and tests may take place prior to Final Completion of the Work by Design-Build Entity. In the event County elects to perform such activities and tests, Design-Build Entity shall afford County access to the Site and all areas of the Work as may be necessary for the performance of such activities and tests.
- 9.2.3.3 Notwithstanding County's rights reserved and acknowledged by this Paragraph 9.2.3, Design-Build Entity may retain its own certified industrial hygienist consultant at Design-Build Entity's own expense and may collect samples and may perform tests including, but not limited to, pre-abatement, during abatement, and post-abatement air monitoring, and County reserves the right to request documentation of all such activities and tests performed by Design-Build Entity relating to the Work and Design-Build Entity shall immediately provide that documentation upon request.
- 9.2.4 If any Work (or the work of others) that is required to be inspected, tested, or approved is covered by Design-Build Entity prior to such inspection, testing, or approval, without written approval of County, it must, if requested by County, be uncovered. Uncovering Work shall be at Design-Build Entity's expense unless Design-Build Entity has given the County timely notice of Design-Build Entity's intention to cover the same and the County has given its written approval of the covering of the Work prior to such inspection, testing, or approval. If a portion of the Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which County's Representative has not specifically requested to observe prior to its being covered, the County may request to see such Construction Work and it shall be uncovered and recovered by Design-Build Entity. If such Work is in accordance with the Contract Documents, the costs of uncovering and recovering the Work shall be added to the Contract Sum by Change Order; and if the uncovering and recovering of the Work delays the critical path of the Work on the Project, an appropriate adjustment of the Contract Time shall be made by Change Order. If such uncovered Work is not in accordance with the Contract Documents, Design-Build Entity shall pay such costs and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.
- 9.2.5 In any case where the Work is covered contrary to the written request of the County, it must, if requested by the County, be uncovered for the County's observation or inspection at Design-Build Entity's expense.
- 9.2.6 Whenever required by the County, Design-Build Entity shall furnish tools, labor, and materials necessary to make examination of Work that may be completed or in progress, including uncovering or taking down portions of finished Work.
- 9.2.7 Inspection of the Work by or on behalf of the County, or the County's failure to do so, shall not under any circumstances be deemed a waiver or approval of any

non-conforming aspect of the Work. Design-Build Entity shall have an absolute duty, in the absence of a written Change Order signed by the County, to perform the Work in conformance with the Contract Documents and correct defective work promptly upon knowledge thereof.

- 9.2.8 Any inspection, evaluation, or test performed by or on behalf of the County relating to the Work is solely for the benefit of the County and shall not be relied upon by Design-Build Entity. Design-Build Entity shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents, nor relieved of any guarantee, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by the County, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Design-Build Entity shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.

9.3 Correction of Defective Work.

- 9.3.1 If Design-Build Entity fails to supply sufficient skilled workers, suitable materials, or equipment, or to furnish or perform the Work in such a way that the completed Work will conform to Contract Documents, the County may order Design-Build Entity to replace any Defective Work or stop any portion of Work to permit the County (at Design-Build Entity's expense) to replace such Defective Work. The County is not obligated to exercise these rights for the benefit of Design-Build Entity or any other party.
- 9.3.2 If required by the County, Design-Build Entity shall promptly, as directed by County, either correct all Defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by the County, remove it from the Site and replace it with Work that is not Defective. Design-Build Entity shall pay all reasonable claims, costs, losses, and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others). Any extraordinary costs incurred in the examination, evaluation, and determination that such Defective Work should be corrected or removed and replaced will be the responsibility of Design-Build Entity. Design-Build Entity shall pay costs of re-inspection and re-testing. If the parties are unable to agree on the amount of an appropriate decrease in the Contract Sum, the County may deduct from monies due or to become due Design-Build Entity all claims, costs, losses, and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others) as well as all costs of the County incurred in exercising such rights and remedies (including, but not limited to, the costs incurred in the examination, evaluation, and determination that such Defective Work should be corrected or removed and replaced). If Design-Build Entity disagrees with the County's calculation, it may make a Claim as provided in Article 12 (Claims by Design-Build Entity) below. The County's rights under this Paragraph 9.3 (Correction of Defective Work) shall be in addition to any other rights it may have under the Contract Documents or by law.
- 9.3.3 Correction Period: If within **two (2)** years after the date of Substantial Completion of the Work or designated Component thereof or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special warranty or guarantee required by the Contract Documents or supplied with regard to the Work or required by any specific provision of the Contract

Documents, any Work is found to be defective, Design-Build Entity shall promptly, without cost to the County and in accordance with the County's written instructions: (i) correct such defective Work or, if it has been rejected by the County, remove it from the Site and replace it with Work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Design-Build Entity does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the County may have the Defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting there from (including but not limited to all costs of repair or replacement of work of others) shall be paid by Design-Build Entity. Where Design-Build Entity fails to correct Defective Work, or defects are discovered outside the correction period, County shall have all the rights and remedies granted by the Contract Documents or by law.

- 9.3.4 In special circumstances where a part of the Work is occupied by the County or a particular item of equipment is placed in continuous service before Completion of all the Work, the correction period for that part of the Work or that item shall start to run from the date such work is occupied, or the date such item is placed in continuous service. Additionally, for equipment and systems having extended guarantees or warranties beyond the **two (2)** year obligation described in this Paragraph 9.3 (Correction of Defective Work), the correction period shall commence on the later of (a) the County's actual use of the item for the purpose intended (i.e., not merely for testing, commissioning, etc.), and (b) when the County's commissioning agent indicates in writing to the County that the item is ready to be used for the purpose intended.
- 9.3.5 Where Defective or rejected Work (and damage to other work resulting there from) has been corrected, removed, or replaced under this provision, and the commencement of the original correction, removal, or replacement began during the first year of the original correction period, the revised correction period hereunder with respect to such Work will be for an additional period of **two (2)** years after such correction or removal and replacement has been satisfactorily completed. Where Defective or rejected Work (and damage to other work resulting there from) has been corrected, removed, or replaced under this provision, and the commencement of the correction, removal, or replacement began during the second, third, or fourth year of any correction period, the revised correction period hereunder with respect to such Work will be prorated for the remaining years of the **two (2)** year guarantee, after such correction or removal and replacement has been satisfactorily completed.
- 9.3.6 In the event of an emergency constituting an immediate hazard to health or safety of County employees, or other persons, property, or licensees, the County may undertake, at Design-Build Entity's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by Work of Design-Build Entity not being in accordance with the requirements of the Contract Documents.

9.4 Acceptance and Correction of Defective Work by the County.

- 9.4.1 If after giving Design-Build Entity the opportunity to repair, should it not do so, the County may accept Defective Work. If, instead of requiring correction or removal and replacement of Defective Work, the County prefers to accept it, the County may do so. Design-Build Entity shall pay all claims, costs, losses, and

damages attributable to the County's evaluation of and determination to accept such Defective Work. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to Work, unless the parties are unable to agree upon an appropriate decrease in the Contract Sum, in which case the County may deduct from monies due or to become due to Design-Build Entity the amount of such claims, costs, losses (including diminution in value), damages, expenses, and liabilities attributable to the acceptance of the Defective Work. If Design-Build Entity disagrees with the deduction, Design-Build Entity may make a Claim as provided in Article 12 (Claims by Design-Build Entity). If the acceptance occurs after final payment, an appropriate amount shall be paid by Design-Build Entity as determined by the County.

9.4.2 The County may correct Defective Work. If Design-Build Entity fails within five (5) Days after written notice from the County to begin to correct Defective Work or to begin to remove and replace rejected Work as required by the County in accordance with Paragraph 9.3 (Correction of Defective Work) above or to provide a plan for correction of Defective Work acceptable to the County, or if Design-Build Entity otherwise fails to perform the Work in accordance with Contract Documents, the County may, after five (5) Days written notice to Design-Build Entity, correct and remedy any deficiency. In connection with such corrective and remedial action, the County may exclude Design-Build Entity from all or part of the Site, take possession of all or part of the Work, and suspend Design-Build Entity's Work related thereto, take possession of all or part of Design-Build Entity's materials, tools, appliances, construction equipment, and machinery at the Site, and incorporate in the Work any materials and equipment stored at the Site or for which the County has paid Design-Build Entity but which are stored elsewhere. Design-Build Entity shall allow the County, its representatives, agents, employees, consultants, and other contractors access to the Site and materials to enable the County to exercise the rights and remedies under this Paragraph 9.4 (Acceptance and Correction of Defective Work by the County). All claims, costs, losses (including diminution in value), damages, expenses, and liabilities incurred or sustained by the County in exercising such rights and remedies will be the responsibility of Design-Build Entity and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree on the amount of an appropriate decrease in the Contract Sum, the County may deduct from monies due or to become due to Design-Build Entity all claims, costs, losses (including diminution in value), expenses, damages, and liabilities attributable to the Defective Work, including all costs of repair or replacement of work of others destroyed or damaged by correction, removal, or replacement of Design-Build Entity's Defective Work. If Design-Build Entity disagrees with the County's calculation, it may make a Claim as provided in Article 12 (Claims by Design-Build Entity) of this Document 00 72 53 (General Conditions).

9.4.3 If Design-Build Entity fails to pay the costs of such removal and storage as required by this Paragraph 9.4 (Acceptance and Correction of Defective Work by the County) within ten (10) Days after written demand, the County may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. Design-Build Entity shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which Design-Build Entity is liable to the County, including compensation for County Representative's services and expenses. If such proceeds of sale do

not cover costs and damages for which Design-Build Entity is liable to County, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due Design-Build Entity or the remaining payments are insufficient to cover such deficiency, Design-Build Entity shall promptly pay the difference to the County.

- 9.4.4 Design-Build Entity's obligations under the Contract Documents are in addition to and not in limitation of its warranty under Paragraph 9.1 (Warranty and Guarantee) of this Document 00 72 53 (General Conditions) or any other obligation of Design-Build Entity under the Contract Documents or law. Enforcement of Design-Build Entity's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies the County may have under the Contract Documents or at law for Defective Work.

Nothing contained in this paragraph shall be construed to establish a period of limitation with respect to other obligations of Design-Build Entity under the Contract Documents and in no way limits either Design-Build Entity's liability for Defective Work or the time within which proceedings may be commenced to enforce Design-Build Entity's obligations under the Contract Documents or law.

9.5 Rights Upon Inspection or Correction.

- 9.5.1 Design-Build Entity shall not be allowed an extension of the Contract Time (or any Milestones) because of any delay in the performance of the Work attributable to the reasonable exercise by the County of its rights and remedies under this Article 9 (of this Document 00 72 53 (General Conditions)). Where the County reasonably exercises its rights under Article 9 of this Document, County retains all other rights it has by law or under the Contract Documents, including but not limited to, the right to terminate Design-Build Entity's right to proceed with the Work for cause under the Contract Documents and/or make a claim or backcharge where a Change Order cannot be agreed upon.
- 9.5.2 Inspection shall not relieve Design-Build Entity of its obligation to have furnished material and workmanship in accordance with Contract Documents. Payment for Work completed through periodic progress payments or otherwise shall not operate to waive the County's right to require full compliance with the Contract Documents and shall in no way be deemed as acceptance of the Work paid therefore. Design-Build Entity's obligation to complete the Work in accordance with the Contract Documents shall be absolute unless the County agrees otherwise in writing.

9.6 Samples and Tests of Materials and Work.

- 9.6.1 Samples or test specimens of all materials to be used or offered for use in connection with the Work shall be prepared at the expense of Design-Build Entity and furnished to the County in such quantities and sizes as may be required for proper examination, analysis, and testing.
- 9.6.2 All Samples shall be submitted in ample time to enable the County to make any tests, analyses, or examinations necessary before the time at which it is desired to incorporate the material into the Work.

9.6.3 The County may refuse consideration of further Samples of same brand or make of material or product previously determined as unsatisfactory for testing, analysis, or examination.

9.7 Proof of Compliance with Contract Provisions. In order that the County may determine whether Design-Build Entity has complied or is complying with requirements of Contract not readily enforceable through inspection and tests of Work and materials, Design-Build Entity shall at any time when requested submit to the County properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.

9.8 Acceptance. Neither inspection by the County or its authorized agents or Representatives, nor any order for the payment of money, nor any payment, nor acceptance of the whole or any part of the Work by the County, nor any extension of time, nor any verbal statements issued by the County or its authorized agents or representatives shall operate as a waiver of any provisions of the Contract or that any part of the Work complies with the requirements of the Contract Documents, or of any power herein reserved by the County or any right to damage herein provided, nor shall any waiver of any breach of the Contract be held to be a waiver of any other subsequent breach, nor shall County be thereby estopped from bringing any action for damages or enforcement arising from the failure to comply with any of the terms and conditions of the Contract Documents.

9.9 Maintenance of Work. Up to the time of Final Completion, as defined in Document 01 42 00 (References and Definitions), Design-Build Entity shall maintain all Materials and Equipment in accordance with manufacturer's requirements, including but not limited to, while such Materials and Equipment are in transit or otherwise are in the care and custody of Design-Build Entity.

10. **DESIGN-BUILD ENTITY'S ORGANIZATION AND EQUIPMENT.**

10.1 Design-Build Entity's Legal Address. The business mailing address, email address(es), and telephone number(s) given in Design-Build Entity's Qualifications and Proposal are hereby designated as the legal address, email(s), and telephone number(s) of Design-Build Entity, but such address(es) and/or number(s) may be changed at any time by notice in writing, delivered to the County, which in conspicuous language advises the County of a change in legal address, email address, or telephone number.

Delivery to Design-Build Entity's legal address or depositing in any post office or post office box regularly maintained by United States Postal Service, in a postpaid wrapper, directed to Design-Build Entity at the legal address, of any plan, notice, letter, or other communication, shall be deemed legal and sufficient service thereof upon Design-Build Entity.

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

Notice in electronic format may be given to the County's and Design-Build Entity's representatives as identified, respectively, by electronic mail provided any such electronic notice includes a read receipt for transmission and is also followed by hard copy via regular U.S. Mail within three (3) Business Days.

- 10.2 Design-Build Entity's Office at the Site. Design-Build Entity is required to maintain an office at the Site, which office shall be headquarters of representative authorized to transmit and receive instructions, drawings, or other communications to and from the County. Instructions, drawings, or other communications given to Design-Build Entity's representative or delivered at the Site office in representative's absence shall be deemed to have been given to Design-Build Entity.
- 10.3 Design-Build Entity's Superintendents or Forepersons. Design-Build Entity shall at all times be represented on Site by one or more superintendents or forepersons authorized and competent to receive and carry out any instructions that may be given to them by the County and Design-Build Entity shall be liable for faithful observance of instructions delivered to Design-Build Entity or to its authorized representative or representatives on Site.
- 10.4 Proficiency in English. Supervisors, forepersons, security guards, safety personnel, and employees who have unescorted access to the Site must possess proficiency in the English language in order to understand, receive, and carry out oral and written communications or instructions relating to their job functions, including safety and security requirements.
- 10.5 Design-Build Entity's and Subcontractors' Employees. Design-Build Entity shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do the Work. If the County notifies Design-Build Entity that any of its employees, or any of its Subcontractors' employees employed on the Work are incompetent, unfaithful, disorderly, profane, fail to observe customary standards of conduct, refuse to carry out any provision of the Contract Documents, use threatening or abusive language to any person on the Work (including persons representing County), violate sanitary rules, or is otherwise unsatisfactory in the reasonable opinion of the County, and if the County requests that any such person be discharged from the Work, then Design-Build Entity or its Subcontractor shall immediately discharge such person from the Work and the discharged person shall not be re-employed on the Work except with written consent of the County.
- 10.5.1 Skilled and Trained Workforce Requirement. Unless exempt by law, Design-Build Entity commits that Design-Build Entity and its Subcontractors at every tier will use a skilled and trained workforce for Work on the Project that falls within an apprenticeable occupation in the building and construction trades in accordance with California law and the Contract Documents.
- 10.5.2 "Skilled and trained workforce" shall be given the meaning defined in Public Contract Code § 2601 (PCC § 2601), which may be amended from time to time. Design-Build Entity agrees that sixty percent (60%) of skilled journeypersons employed to perform Work on the Project by Design-Build Entity or its Subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation in accordance with PCC § 2601.
- 10.5.3 The apprenticeship graduation requirements are satisfied for a particular calendar month if either of the following is true:
- (1) At least the required percentage of the skilled journeypersons employed by Design-Build Entity or Subcontractor to perform Work on the Project meet the graduation percentage requirement; or
 - (2) For the hours of Work performed by skilled journeypersons employed by Design-Build Entity or Subcontractor on the Project, the percentage of hours

performed by skilled journeypersons who met the graduation requirement is at least equal to the required graduation percentage.

- 10.5.4 Design-Build Entity or Subcontractor need not meet the apprenticeship graduation requirements of PCC § 2601, if during the calendar month, Design-Build Entity or Subcontractor employs skilled journeypersons to perform fewer than ten (10) hours of Work on the Project.
- 10.5.5 The Subcontractor need not meet the apprenticeship graduation requirements of PCC § 2601 if both of the following are met:
- (1) The Subcontractor was not a listed subcontractor under PCC § 4104, or a substitute listed subcontractor; and
 - (2) The subcontract does not exceed one-half of 1 percent (1/2 of 1%) of the original Contract Sum.
- 10.5.6 Design-Build Entity's commitment that a skilled and trained workforce will be used to perform the Project shall be established by providing a monthly report demonstrating that Design-Build Entity and its Subcontractors at every tier are complying with the requirements of PCC § 2601 while the Project is being performed. A monthly report shall be provided thirty (30) Days after the end of the month for which Work is being reported or as otherwise agreed between Design-Build Entity and County. If Design-Build Entity fails to provide a monthly report, County shall withhold payment for the portion of the monthly pay application related to the non-compliance of Design-Build Entity or portion of the monthly pay application related to the non-compliance of any Subcontractor.
- 10.5.7 Upon notice to Design-Build Entity of withholding for non-compliance, the non-compliant Design-Build Entity and/or Subcontractor may cure the non-compliance. If Design-Build Entity and/or any Subcontractor cures the non-compliance or substantially complies with required percentages of PCC § 2601, any monies withheld by the County will be released no later than the next Application for Payment. If Design-Build Entity and/or any Subcontractor fails to cure the non-compliance or substantially comply with the requirements within sixty (60) Days of notice of the non-compliance, Design-Build Entity and/or non-compliant Subcontractor shall meet and confer with the County to demonstrate Design-Build Entity's and/or Subcontractor's efforts and plan to achieve substantial compliance with the requirements, on a cumulative basis, by completion of the Project. A meet and confer may be held earlier upon Design-Build Entity's written request to the County. The County, after reasonable demonstration by Design-Build Entity and/or Subcontractor that good faith and best efforts have been and are being made to substantially comply with the requirements of PCC § 2601, shall release any monies withheld.
- 10.5.8 The PCC § 2601 percentages shall not apply to Punch List or warranty/correction Work for a Design-Build Entity and/or Subcontractor if that Design-Build Entity and/or Subcontractor has otherwise substantially complied with the requirements of PCC § 2601 during the Project.
- 10.5.9 If Design-Build Entity and/or Subcontractor is unable to substantially comply with the required percentages, on a cumulative basis, by Substantial Completion of the Project, the County, in its discretion may assess a charge to the non-compliant party of \$1,000.00 per percentage that Design-Build Entity and/or Subcontractor

fails to meet the graduation percentage requirements, not to exceed \$5,000.00 or ten percent (10%) of the total Contract or subcontract value, whichever is less. This shall be the sole and exclusive remedy for Design-Build Entity's and/or any Subcontractor's non-compliance with this paragraph.

10.6 Design-Build Entity to Supply Sufficient Workers and Materials.

- 10.6.1 Unless otherwise required by the County pursuant to the terms of the Contract Documents, Design-Build Entity shall at all times keep on the Site a sufficient amount of equipment and materials and employ a sufficient number of qualified workers to prosecute the Work at a rate and in a sequence and manner necessary to complete the Work herein required within the Contract Time. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type.
- 10.6.2 At any time during progress of the Work should Design-Build Entity directly or indirectly (through Subcontractors or Subconsultants) refuse, neglect, or be unable to supply sufficient materials or employ qualified workers to prosecute the Work as required, then the County may require Design-Build Entity to accelerate the Work and/or furnish additional qualified workers or materials as the County may consider necessary, at no cost to County. If Design-Build Entity does not comply with the notice within five (5) Business Days of date of service thereof, the County shall have the right (but not a duty) to provide materials and qualified workers to finish the Work or any affected portion of the Work, as the County may elect. The County may, at its discretion, exclude Design-Build Entity from the Site, or portions of the Site or separate work elements during the time period that the County exercises this right. The County shall deduct from monies due or become due under the Contract Documents, the sums necessary to meet expenses thereby incurred and paid to persons supplying materials and doing the Work. The County shall deduct from funds or appropriations set aside for purposes of Contract Documents the amount of such payments and charge them to Design-Build Entity as if paid to Design-Build Entity. Design-Build Entity shall remain liable for resulting delay, including liquidated damages and indemnification of the County from claims of others.
- 10.6.3 Exercise by the County of the rights conferred upon it in this Paragraph 10.6 (Design-Build Entity to Supply Sufficient Workers and Materials) is entirely discretionary on the part of the County. The County shall have no duty or obligation to exercise the rights referred to in this Paragraph 10.6, and the failure to exercise such rights shall not be deemed an approval of existing Work progress or a waiver or limitation of the County's right to exercise such rights in other concurrent or future similar circumstances. The rights conferred upon the County under this Paragraph 10.6 are cumulative to the County's other rights under the Contract Documents and law including, but not limited to, the County's right to terminate the Contract.
- 10.6.4 The County may, if it deems necessary for reasons other than as described in this Paragraph 10.6 (Design-Build Entity to Supply Sufficient Workers and Materials) of this Document 00 72 53 (General Conditions), direct Design-Build Entity to accelerate the Work by increasing crew sizes, working overtime (as permitted by law), and/or performing shift work. If directed to perform overtime and/or shift work, Design-Build Entity shall work said overtime and/or shift work, and the County shall pay Design-Build Entity solely for the additional premium wages paid, plus taxes imposed by law on such additional wages. Unless

otherwise directed by the County, accelerated Work shall be performed utilizing the most cost-effective available method. (For example, the County shall not be responsible to pay the premium for overtime work if the same Work could have been performed on second shift utilizing a lower premium.)

10.7 Design-Build Entity to List Trades Working. Design-Build Entity shall list the trades working on the Site and their scheduled activities on a daily basis and provide a copy of that list to the County on a daily basis.

10.8 Design-Build Entity's Use of the Site.

10.8.1 Design-Build Entity shall not make any arrangements with any person to permit occupancy or use of any land, structure, or building within the limit of the Work or Project, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the County and any owner, former owner, or tenant of such land, structure, or buildings.

Design-Build Entity may not occupy County-owned property outside the limit of the Work as shown on the Drawings unless it obtains prior approval from the County. Personnel of Design-Build Entity and Subcontractors shall not occupy, live upon, or otherwise make use of the Project Site during any time that Work is not being performed at the Site, except as otherwise provided in the Contract Documents.

10.8.2 Design-Build Entity shall, during performance of the Work, keep the Site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by Design-Build Entity. Design-Build Entity shall remove all excess dirt, waste material, and rubbish caused by Design-Build Entity; tools; equipment; machinery; and surplus materials from the Site and surrounding area at the completion of the Work.

11. PROSECUTION AND PROGRESS OF THE WORK.

11.1 Schedules and Examinations of Contract Documents.

11.1.1 Before undertaking each authorized Phase of the Work, Design-Build Entity shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon, all applicable field and engineering measurements and all actual conditions. Design-Build Entity shall promptly report in writing to the County any conflict, error, ambiguity, or discrepancy which Design-Build Entity may discover and shall obtain a written interpretation or clarification from the County before proceeding with any Work affected thereby.

11.1.2 Design-Build Entity shall submit an electronic version of an original, plus hardcopies of the following schedules to the County:

11.1.2.1 Schedules and Reports as required by Documents 01 32 16 (Schedules and Reports) and 01 33 00 (Submittal Procedures).

11.1.2.2 Preliminary Schedule of Values for payment for all the Work which will include quantities and prices of items aggregating the Contract Sum and Final GMP and will subdivide each schedule of value into component activities in sufficient detail to serve as the basis for progress payments

during construction. Such "Schedule of Values" will include Fixed Percentage Rates for (Design-Build Entity's) Indirect Costs for: Construction Overhead and Profit, General Conditions Costs, Insurance Premiums, and Payment Bond and Performance Bond Premiums, applicable to each item of Work, will include a line item for Project Record Documents and a line item for Project scheduling, and will conform to Document 01 29 00 (Payment Procedures).

- 11.1.3 Unless otherwise provided in the Contract Documents, at least fifteen (15) Days before submission of the first Application for Payment, a conference attended by Design-Build Entity, the County, and others as appropriate, will be held to review for acceptability the schedules submitted in accordance with Paragraph 11.1.2 above and first reviewed at the "Design Conference" required by Document 01 31 19 (Project Meetings). Schedules shall be updated and completed as required by Documents 01 29 00 (Payment Procedures), 01 32 16 (Schedules and Reports) and 01 33 00 (Submittal Procedures). **No progress payment shall be due or owing to Design-Build Entity until the schedules are submitted to and reasonably acceptable to the County and/or the County consultants as meeting the requirements of the Contract Documents, including Documents 01 29 00 (Payment Procedures), 01 32 16 (Schedules and Reports), and 01 33 00 (Submittal Procedures).**

The County's acceptance of Design-Build Entity's schedules will not create any duty of care or impose on the County any responsibility for the sequencing, scheduling, or progress of Work nor will it interfere with or relieve Design-Build Entity from Design-Build Entity's full responsibility therefore.

- 11.1.4 Before commencing any portion of the Work, Design-Build Entity shall, to permit proper inspection of the Work and to assure measurements necessary for record and payment, inform the County in writing as to time and place at which Design-Build Entity wishes to commence the Work and the nature of the Work to be done. Information shall be given to the County a reasonable time in advance of time at which Design-Build Entity proposes to begin Work, so that the County may make necessary preliminary work without inconvenience or delay to Design-Build Entity. If the County so requires, Design-Build Entity shall submit weekly, a rolling six (6) week schedule, listing the activities anticipated to be performed along with the dates for which Work is expected to be performed.
- 11.1.5 Design-Build Entity shall submit submittals and Shop Drawings to the County for review in accordance with Document 01 33 00 (Submittal Procedures). Submission of a Shop Drawing shall constitute Design-Build Entity's representation that all requirements of Document 01 33 00 (Submittal Procedures) have been complied with. All Submittals will be identified as the County may require and in the number of copies specified in this Document 00 72 53 (General Conditions) or Document 01 33 00 (Submittal Procedures).
- 11.1.6 Design-Build Entity shall not perform any Work requiring submission of a Shop Drawing or Sample or other submittal prior to submission and a favorable review thereof by Design-Build Entity's Architect, associated Engineer or design professional, and the County. Where a Shop Drawing or Sample or other submittal is required by the Contract Documents or the final schedule of Shop Drawing and Sample submissions accepted by the County, any related Work performed prior to the County's approval of the pertinent submittal will be at the sole expense, responsibility, and risk of Design-Build Entity.

- 11.1.7 Design-Build Entity shall utilize the Project Master Schedule in planning, scheduling, coordinating, performing, and controlling the Work (including all activities of Subcontractors, assigned Design-Build Entities, equipment vendors, and suppliers). Design-Build Entity shall update the Project Master Schedule on a monthly basis for purpose of recording and monitoring the progress of the Work and evaluating and preparing Design-Build Entity's monthly progress payments.
- 11.1.8 Design-Build Entity's failure to submit and maintain an acceptable Project Master Schedule may, in the County's discretion, and without limiting the materiality of Design-Build Entity's other obligations under the Contract Documents, constitute grounds to declare Design-Build Entity in material breach of the Contract Documents.

11.2 Lines and Grades, Measurements.

- 11.2.1 The Work shall be done to lines and grades established by Design-Build Entity at Design-Build Entity's cost in accordance with the Contract Documents, unless the County, in its discretion, directs in writing otherwise.
- 11.2.2 At times it may be necessary to discontinue portions of Design-Build Entity's Work in order for the County to make measurements or surveys without interruptions or other interference that might impair accuracy of results. At any time, on request of the County, Design-Build Entity shall discontinue the Work to such extent as may be necessary for purposes of the County.
- 11.2.3 No direct payment will be made for cost to Design-Build Entity of any work or delay occasioned by establishing or checking lines and grades or making other measurements, or by inspection, and no extension of time will be allowed for such delays.

11.3 Maintenance, Access, Inspection, and Audit of Cost Data and Project Records.

- 11.3.1 Design-Build Entity shall maintain full and correct information as to number of workers employed in connection with each subdivision of the Work, classification, and rate of pay of each worker in the form of certified payrolls, cost to Design-Build Entity of each class of materials, tools and appliances used by Design-Build Entity in the Work, and amount of each class of materials used in each subdivision of the Work. If Design-Build Entity maintains or is capable of generating summaries or reports comparing actual Project costs with cost estimates or any budgets, it shall provide the County with a copy of such report whenever it is requested by or on behalf of the County.
- 11.3.2 Design-Build Entity shall maintain daily job reports recording all significant activity on the Project, including the number of workers and specific equipment on Site, Work activities, Work accomplished, problems encountered and delays, etc. Design-Build Entity shall provide the County with copies for each Day Design-Build Entity works on the Project, to be delivered to County either the same Day or the following morning before starting work at the Site. Design-Build Entity shall take weekly progress photographs of all areas of the Work. Design-Build Entity shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors. Design-Build Entity shall report to the Surety promptly upon receiving requests from the Surety to provide reporting. Design-Build Entity shall provide copies of daily job reports as required by the County or specified in Document 01 32 16 (Schedules and Reports).

11.3.3 The County shall have the right to access, audit, and copy Design-Build Entity's books and records of any type, nature, or description relating to the Project (including but not limited to financial records reflecting in any way costs claimed on the Project), and to inspect the Site, including Design-Build Entity's trailer, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, the County shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Qualifications and Proposal (subject to Document 00 54 27 (Escrow Bid Documents)), cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job progress reports, photographs, as-built drawings maintained by Design-Build Entity, job-cost reports, records and accounts, including complete documentation supporting accounting entries, records of accounts payable and receivable, invoices, receipts, profit and loss statements, bank statements, books, journals, correspondence, instructions, drawings, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data memoranda, subcontract files (including proposals of successful and unsuccessful bidders, bid takeoffs, and recaps, etc.); leases; commitments; arrangements; Change Order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned; tax documentation; recordings; notes; daily diaries; progress photographs and videos, Superintendent reports and other data in hardcopy, PDF format, and in a "live"/computer readable data format relating to the Contract.

11.3.4 Design-Build Entity shall maintain in a safe place at the Site one (1) record copy of all Drawings which shall include progress As-Built Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Work Directives, Force Account orders, Construction Change Directives, and written interpretations and clarifications in good order and annotated to show all changes made during construction. These Project Record Documents, together with all approved Samples and a counterpart of all approved Shop Drawings and submittals, shall be maintained and available to the County for reference and inspection.

Upon completion of the Work, Design-Build Entity shall deliver to the County, the Project Record Documents, Samples and Shop Drawings, As-Built Drawings, and Record Drawings and Specifications. Except for materials and records delivered to County, Design-Build Entity shall maintain and retain, for a period of at least five (5) years after Contractor's receipt of the final payment under the Contract, all records relating to the Contract or to the Project, including without limitation estimates, bids, shop drawings, submittals, subcontracts, personnel and payroll records, job reports and diaries, receipts, invoices, cancelled checks, and financial records. Upon request by County, at no additional charge, Design-Build Entity shall promptly make such records available to County, or to authorized representatives of the state and federal governments, at a convenient location within the County designated by County, and without restriction or limitation on their use.

11.3.5 The County and any other applicable governmental entity shall have the right to inspect all information and documents maintained under this Paragraph 11.3 (Maintenance, Access, Inspection, and Audit of Cost Data and Project Records) at any time during the Project and for a period of five (5) years following Final Completion. During this five (5) year period, Design-Build Entity and all

Subconsultants and Subcontractors shall maintain information and documents in either paper or electronic form. This right of inspection shall not relieve Design-Build Entity of its duties and obligations under the Contract Documents. This right of inspection shall be specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents. This paragraph will survive Final Completion and any earlier termination of the Contract.

12. **CLAIMS BY DESIGN-BUILD ENTITY.**

12.1 Performance During Claim Process. Design-Build Entity shall continue to perform its Work under the Contract and shall not cause a delay in the Work during any dispute, Claim, negotiation, mediation, or arbitration proceeding, except by written agreement by the County. The provisions of this Article 12 shall survive termination, breach, or completion of the Contract, and constitute a claims procedure by agreement under Government Code § 930.2. Design-Build Entity shall bear all costs incurred in the preparation and submission of a Claim.

12.2 **Notice of Third Party Claims.** County shall provide Design-Build Entity with prompt written notice of the receipt of any third-party claim relating to the Contract by sending a copy of the third-party claim to Design-Build Entity at the address indicated in the Agreement and pursuant to PCC § 9201.

12.3 Definition of Claim.

12.3.1 For purposes of this paragraph, a "Claim" means a separate demand sent by registered or certified mail with return receipt requested by the Design-Build Entity for:

12.3.1.1 A time extension,

12.3.1.2 Payment of money or damages arising from Work done by or on behalf of the Design-Build Entity pursuant to the Contract and payment of which is not otherwise expressly provided for, or the claimant is not otherwise entitled to, or

12.3.1.3 Payment of money that the County disputes is owing.

12.4 Claim Presentations.

12.4.1 The attention of the Design-Build Entity is drawn to Government Code § 12650, et seq. regarding penalties for false claims.

12.4.2 Design-Build Entity shall file with the County any written Claim, including the documents necessary to substantiate it, on or before the date of Design-Build Entity's final Application for Payment on the Contract.

12.4.3 The Design-Build Entity shall bind all its Subconsultants, Subcontractors, material persons, and suppliers to the provisions of this Article including, but not limited to, provisions relating to mediation and arbitration, and will hold the County harmless against disputes and claims by Subconsultants, Subcontractors, or suppliers. The Claim notice and documentation procedure described in this Article 12 (Claims by Design-Build Entity) applies to all Claims

and disputes arising under the Contract Documents, including without limitation any Claim or dispute by any Subconsultant, Subcontractor, or supplier. All Subconsultant, Subcontractor, and supplier Claims of any type shall be brought only through Design-Build Entity as provided in this Article 12. Under no circumstances shall any Subcontractor, Subconsultant, or supplier make any direct Claim against the County.

12.5 Claim Resolution.

12.5.1 In the event of a dispute between the parties as to performance of the Work, the interpretation of the Contract, or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code § 9204 (PCC § 9204), if applicable. Pending resolution of the dispute, if the dispute is not resolved, Design-Build Entity agrees it will neither rescind the Contract nor stop the progress of the Work but will allow determination by judicial arbitration in a court of the State of California having competent jurisdiction of the dispute, after the Project has been completed, and not before.

12.5.2 For all Claims which arise between a Design-Build Entity and a local agency, the procedure set forth in PCC § 9204 shall apply:

12.5.2.1 The County shall respond in writing within forty-five (45) Days of receipt of the Claim identifying what portion of the Claim is disputed and what portion is undisputed.

12.4.2.1.1 Upon receipt of a Claim, County and Design-Build Entity may, by mutual agreement, extend the time period for County to respond.

12.5.2.1.2 Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) Days after the County issues its written response to the Claim.

12.4.2.1.3 Design-Build Entity shall furnish reasonable documentation to support the Claim.

12.5.2.2 If Design-Build Entity disputes County's written response, or if County fails to respond to a Claim issued pursuant to this Article 12 within the time prescribed, Design-Build Entity may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, County shall schedule a meet and confer conference within thirty (30) Days for settlement of the dispute.

12.5.2.3 Within ten (10) Business Days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the County shall provide Design-Build Entity a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) Days after the County issues its written statement.

- 12.5.2.4 Any disputed portion of the Claim, as identified by the statement referenced in Paragraph 12.5.2.3 shall be submitted to nonbinding mediation, with the County and Design-Build Entity sharing the associated costs equally.
 - 12.5.2.4.1 County and Design-Build Entity shall mutually agree to a mediator within ten (10) Business Days after the disputed portion of the Claim has been identified in writing.
 - 12.5.2.4.2 If County and Design-Build Entity cannot agree to a mediator, each party shall select a mediator, and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim.
 - 12.5.2.4.3 County and Design-Build Entity shall each bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
 - 12.5.2.4.4 If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with § 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding § 1141.11 of that Code. The Civil Discovery Act of 1986, (Article 3 (commencing with § 2016) of Chapter 1 of Title 4 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
- 12.5.2.5 Failure by County to respond to a Claim within the time periods described in this Article 12 or to otherwise meet the time requirements of PCC § 9204 shall result in the Claim being deemed rejected in its entirety.
- 12.5.2.6 The County shall not fail to pay money as to any portion of a Claim which is undisputed except as otherwise provided in the Contract Documents. Unpaid undisputed Claim amounts not paid in a timely manner will accrue interest at seven percent (7%) per annum. In any suit filed pursuant to this paragraph, the County shall pay interest at the legal rate on any arbitration award or judgment. Interest shall begin to accrue on the date the suit is filed in a court of law.
- 12.5.2.7 If a Subconsultant, Subcontractor, or lower-tier Subcontractor lacks legal standing to assert a Claim against County because privity of contract does not exist, Design-Build Entity may present County a Claim on behalf of a Subconsultant, Subcontractor, or lower-tier Subcontractor. A Subconsultant or Subcontractor may request, in writing, either on his/her/their own behalf or that of a lower-tier Subcontractor, that Design-Build Entity present a Claim for work which was performed by Subconsultant, Subcontractor, or by a lower-tier Subcontractor on behalf of Subconsultant/Subcontractor. Subconsultant/Subcontractor requesting that the Claim be presented to County must furnish reasonable documentation to support the

Claim. Within forty-five (45) days of receipt of this written request, Design-Build Entity must notify Subconsultant/Subcontractor in writing as to whether Design-Build Entity presented the Claim to County, and, if Design-Build Entity did not present the Claim, provide Subcontractor with a written statement of the reasons for not having done so.

13. LEGAL AND MISCELLANEOUS.

13.1 Laws and Regulations.

- 13.1.1 Design-Build Entity shall keep fully informed of and shall comply with all statutes, laws, ordinances, codes, rules, regulations, and orders of any properly constituted authority affecting the Work and persons connected with Work, and shall protect and indemnify the County and its officers, employees, consultants, and agents against any claim or liability, including attorneys' fees, arising from or based on violation of any statutes, laws, ordinances, codes, rules, regulations, or orders, whether by Design-Build Entity or by Subcontractors, employees, or agents. Authorized persons may at any time enter upon any part of the Work to ascertain compliance of all applicable statutes, laws, ordinances, codes, rules, regulations, and orders.
- 13.1.2 Whenever the Drawings and Specifications require large sizes or higher standards than are required by any applicable statute, law, ordinance, code, rule, regulation, or order, the Drawings and Specifications shall govern. Whenever the Drawings and Specifications require something, which will violate such statutes, laws, ordinances, codes, rules, regulations, or orders, then such statutes, laws, ordinances, codes, rules, regulations, or orders shall govern.
- 13.1.3 Design-Build Entity shall perform the Work in accordance with all laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over the County, Design-Build Entity, any Subcontractor, the Project, the Site, the Work, or the prosecution of the Work.
- 13.1.4 Design-Build Entity shall perform the Work in accordance with all requirements of any insurance company issuing insurance required hereunder.
- 13.1.5 Design-Build Entity shall perform the Work in accordance applicable sections in the Labor Code.
- 13.1.6 Design-Build Entity shall give notices required by all laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities, including all environmental laws and all notice requirements under the State of California Safe Drinking Water and Enforcement Act of 1986 (Health & Safety Code §§ 25249.5 et seq.). Design-Build Entity shall promptly notify County's Representative in writing if Design-Build Entity becomes aware during the performance of the Work that the Contract Documents are at variance with Applicable Code Requirements.
- 13.1.7 If Design-Build Entity performs Work which it knows or should know is contrary to any laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders, without prior notice to the County and the County's Representative, Design-Build Entity shall be responsible for such Work

and any resulting damages including, without limitation, the costs of correcting Defective Work.

13.2 Permits and Taxes.

13.2.1 Design-Build Entity shall: (a) identify and procure all permits and licenses applicable to the Work (including Regulatory Agency permits and, to the extent applicable, those for environmental matters), (b) comply with, implement and acknowledge effectiveness of all permits, (c) initiate and cooperate in securing all required notifications or approvals therefore, and (d) give all notices necessary and incident to due and lawful prosecution of the Work, unless otherwise provided herein. The County will pay all permit fees as indicated in Document 00 52 00 (Agreement) required in securing such permits and licenses. For all such permits and licenses, Design-Build Entity shall prepare all forms and documentation necessary for any required submittal. Design-Build Entity shall calculate and confirm the fees due to Regulatory Agency and inform the County of the amount due to any entity for such permits and licenses no later than thirty (30) Days prior to when a check is required. Design-Build Entity shall pay all sales and/or use taxes levied on materials, supplies, or equipment purchased and used on or incorporated into the Work, and all other taxes properly assessed against equipment or other property used in connection with the Work, without any increase in the Contract Sum, including all increases in sales and/or use taxes and all other such taxes effective as of the date of Design-Build Entity's response to the relevant Request For Supplemental Information, as amended. Design-Build Entity shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads, and other works in advance of operations, even where the County may have already obtained permits for the Work.

13.2.2 Except as is provided in Paragraph 13.7 of this Document 00 72 53 (General Conditions), Design-Build Entity will be responsible for any documentary, excise, stamp, and transfer taxes and any sales, use, or other taxes imposed by reason of the design, delivery, sale, transfer, or installation of the Work (or any item of the Work) regardless of which party has liability for such tax under applicable law, and any deficiency, interest, or penalty asserted with respect thereto.

Design-Build Entity represents that it has or will obtain prior to the transfer of title of Work (or any portion of the Work), the necessary seller's permit as required by the State of California. Design-Build Entity represents that it will collect, report, and pay all sales or use taxes to the State Board of Equalization. Upon full payment, Design-Build Entity will issue the County a receipt pursuant to Revenue & Taxation Code § 6203, relieving the County of all liability for any tax relating to the Work or any item of the Work.

13.3 Responsibility of Design-Build Entity and Indemnification.

13.3.1 None of the State of California agencies, the County, its Board of Supervisors, County's Representative, their officers, directors, representatives, agents, consultants, or employees associated with the Work shall be liable or accountable in any manner for:

13.3.1.1 loss or damage of any type that may happen to any part of the Work or any part thereof;

- 13.3.1.2 loss or damage of any type to materials or other things used or employed in performing the Work;
 - 13.3.1.3 injury, sickness, disease, or death of any person, including, but not limited to, workers and the public;
 - 13.3.1.4 damage of any type to property, and Design-Build Entity releases all of the foregoing persons and entities from any and all such claims;
 - 13.3.1.5 or any claims or liabilities imposed or existing by virtue of the removal, abatement, and disposal of hazardous materials and waste including, but is not limited to, liabilities connected to the selection and use of a waste disposal facility, personal injury, property damage, loss of use of property, damage to the environment or natural resources, or “disposal” and “release” of materials associated with the Work (as defined in 42 U.S.C. § 9601 et seq.).
- 13.3.2 To the furthest extent permitted by law (including without limitation Civil Code § 2782 and 2782.8), Design-Build Entity shall assume the defense of, and indemnify, and hold harmless the County of Alameda, and all of its officers, directors, representatives, attorneys, agents, employees and consultants, including but not limited to the County Board of Supervisors and all County Representatives from third party (not including the County and Design-Build Entity) claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of Regulatory Agencies and attorneys’ fees and consultants’ fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work to the extent caused by any breach of contract, negligent act, error or omission of Design-Build Entity, Subcontractors (of any tier), subconsultants, designers, suppliers, any one directly employed by any of them or any one for whose acts any of them may be liable, regardless of whether it is caused by the concurrent negligent act or omission, of an indemnified party, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on the indemnified party. Provided, however, that Design-Build Entity’s indemnification obligations shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a claim against an indemnity was caused solely by the negligence or willful misconduct of that indemnity. In that event, however, Design-Build Entity’s indemnification obligations shall remain with respect to all other indemnities.
- 13.3.3 Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Design-Build Entity, its Subcontractors of any tier, its designers or suppliers, or the officers, directors, representatives, employees, or agents of any of them.
- 13.3.4 To the furthest extent permitted by law (including, without limitation, Civil Code § 2782 and 2782.8), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of contract, negligence, fault, or strict liability of the parties indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work and the terms of the Contract Documents. If Design-Build Entity fails to perform any of its defense or indemnity obligations, the County may in its discretion backcharge Design-Build Entity for the County’s

costs and damages resulting therefrom and withhold such sums from progress payments or other Contract monies which may become due.

- 13.3.5 Except to the extent, if any, prohibited by Civil Code § 2782 or 2782.8, Design-Build Entity's obligations under this section exist regardless of the existence or degree of fault of County or any indemnitee and shall be as broad and comprehensive as allowed by law.
 - 13.3.6 The County and all of its officers, directors, representatives, agents, consultants, and employees associated with the Work, including, but not limited to, the County Board of Supervisors, County consultants, and each of the County's Representatives, the State of California agencies, shall not owe any duty of care to Design-Build Entity, its Subcontractors, subconsultants or suppliers, except as set forth in the Contract.
 - 13.3.8 With respect to third-party claims against Design-Build Entity, Design-Build Entity waives any and all rights to any type of express or implied indemnity against County and each of its officers, employees, consultants, and agents including, but not limited to County, the County Board of Supervisors, County consultants, and all other County Representatives.
 - 13.3.9 Design-Build Entity is responsible for any liability imposed by law and for injuries to or death of any person including, but not limited to, workers and the public or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Work or at any time before its completion and final acceptance.
 - 13.3.10 Design-Build Entity and Design-Build Entity's insurance carriers shall respond within fifteen (15) Days to the tender of any claim for defense and indemnity by County, unless this time has been extended by County.
- 13.4 Notice of Concealed or Unknown Conditions. If either of the following conditions is encountered at the Site when digging trenches or other excavations, Design-Build Entity shall give a written Notice of Differing Site Conditions to the County promptly before conditions are disturbed (except in an emergency as required by Paragraph 16.4 (Emergencies) of this Document 00 72 53 (General Conditions)), and in no event later than seven (7) Days after first observance of (a) subsurface or Latent physical conditions which differ materially from those indicated in the Contract Documents or information provided by the County; (b) unknown physical conditions of an unusual nature or which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. In response to Design-Build Entity's written Notice of Differing Site Conditions under this Paragraph 13.4 (Notice of Concealed or Unknown Conditions), the County will investigate the identified conditions, and if they differ materially and cause increase or decrease in Design-Build Entity's cost of, or time required for, performance of any part of the Work, the County will issue either a Request for Proposal or a Change Order under the procedures described in the Contract Documents, including without limitation Document 01 26 00 (Contract Modification Procedures).
- 13.4.3 If the County determines that physical conditions at the Site are not Latent or are not materially different from those indicated in the Contract Documents or information provided by the County; or that no change in terms of the Contract Documents is justified, the County shall so notify Design-Build Entity in writing, stating reasons. If the County and Design-Build Entity do not agree on an

adjustment in Contract Sum or Contract Time, Design-Build Entity shall proceed with the Work as directed by the County and may file a Claim as provided in Article 12 (Claims by Design-Build Entity) of this Document 00 72 53 (General Conditions).

13.4.4 Design-Build Entity is not entitled to any adjustment in the Contract Sum or Contract Time regarding claimed Latent or materially different Site conditions, whether above or below grade if (a) Design-Build Entity knew of the existence of such conditions at the time Design-Build Entity submitted its Proposal; (b) Design-Build Entity should have known of the existence of such conditions as a result of having complied with the requirements of the Contract Documents, including without limitation Article 1 (Investigations and Subcontractors) and Paragraph 8.4 (Existing Utilities) of this Document 00 72 53 (General Conditions); (c) the information or conditions claimed by Design-Build Entity to be Latent or materially different consist of information, conclusions, opinions, or deductions of the kind the Contract Documents, including without limitation Article 1 of this Document 00 72 53 (General Conditions) preclude reliance upon; (d) Design-Build Entity was required to give written Notice of Differing Site Conditions under the Contract and failed to do so within the time required; or (e) Design-Build Entity could have reasonably inferred the existence of such conditions based on its experience and expertise on similar projects in urban areas.

13.4.5 If the County and Design-Build Entity are unable to agree on entitlement to or as to the amount or length of any adjustment in the Contract Sum or Contract Time required under this Paragraph 13.4 (Notice of Concealed or Unknown Conditions), Design-Build Entity shall proceed with the Work as directed by the County and may make a Claim as provided in Article 12 (Claims by Design-Build Entity) of this Document 00 72 53 (General Conditions).

13.5 Notice of Hazardous Waste or Materials Conditions.

13.5.1 Written Notice of Hazardous Materials Condition by Design-Build Entity shall be given to the County promptly, before any of the following conditions are disturbed (except in an emergency as required by Paragraph 16.4 (Emergencies) below), and in no event later than twenty-four (24) hours after first observance, of any (a) material that Design-Build Entity believes may be material that is hazardous waste or hazardous material, as defined in § 25117 of the Health & Safety Code (including, without limitation, asbestos, lead, PCBs, petroleum, and related hydrocarbons, and radioactive material) that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law ("Hazardous Materials"); (b) other material which may present a substantial danger to persons or property exposed thereto in connection with Work at the Site ("other materials").

13.5.2 Except as otherwise provided in the Contract Documents or as provided by applicable law, Design-Build Entity shall not be required to give any notice for the disturbance or observation of any such Hazardous Materials or other materials where such matter is disturbed or observed as part of the scope of the Work under the Contract Documents (such as hazardous waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of Work under the Contract Documents), where Design-Build Entity complies with all requirements in the Contract Documents and applicable law respecting such Hazardous Materials.

- 13.5.3 Design-Build Entity's written Notice of Hazardous Materials Conditions under this Paragraph 13.5 (Notice of Hazardous Waste or Materials Conditions) shall indicate whether the Hazardous Materials or other materials were shown or indicated in the Contract Documents to be within the Scope of Work Summary in the Criteria Documents, and whether the Hazardous Materials or other materials were brought to the Site by Design-Build Entity, its Subcontractors, subconsultants, suppliers, or anyone else for whom Design-Build Entity is responsible.
- 13.5.4 Design-Build Entity shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed Hazardous Materials if (a) Design-Build Entity knew of the existence of such Hazardous Materials or other materials at the time Design-Build Entity submitted its Proposal; or (b) Design-Build Entity failed to give the written Notice of Hazardous Materials Conditions within the time required these General Conditions. Notwithstanding (a) and (b) above, Design-Build Entity may (subject to Paragraphs 13.5.2 and 13.5.3 above) be entitled to adjustment in the Contract Sum or Contract Time regarding claimed Hazardous Materials if such Hazardous Material is not indicated on the reports and information provided by the County, other information reasonably available to Design-Build Entity, visual observation, or reasonable investigation. If the County determines that conditions do involve Hazardous Materials or that change in Contract Document terms is justified, then the County will either issue a Request for Proposal or an appropriate Change Order under the procedures described in the Contract Documents, including without limitation Document 01 26 00 (Contract Modification Procedures).
- 13.5.5 If the County determines that conditions do not involve Hazardous Materials such that no change in Contract Document terms is justified, the County shall notify Design-Build Entity in writing, stating the reasons for its determination. If the County and Design-Build Entity cannot agree on any claimed adjustment in Contract Sum or Contract Time, Design-Build Entity shall proceed with the Work as directed by the County and may file a Claim as provided in Article 12 (Claims by Design-Build Entity) of this Document 00 72 53 (General Conditions).
- 13.5.6 In addition to the parties' other rights, if Design-Build Entity does not agree to resume work based on a reasonable belief that it is unsafe, or does not agree to resume work under special conditions, the County may order the disputed portion of work deleted from the Work, or performed by others, or the County may invoke its right to terminate Design-Build Entity's right to proceed under the Contract Documents pursuant to Paragraph 13.8 (Termination of Contract for Cause and Written Adequate Assurances of Performance) or 13.9 (Termination of Contract for Convenience) of this Document 00 72 53 (General Conditions) as the facts may warrant. If Design-Build Entity does not agree with the County's determination of any adjustment in the Contract Sum or Contract Time as a result, Design-Build Entity may make a Claim as provided in Article 12 (Claims by Design-Build Entity) of this Document 00 72 53 (General Conditions).
- 13.5.7 To the furthest extent permitted by law, the County shall assume the defense of, and indemnify, and hold harmless Design-Build Entity, and all of its, members, officers, directors, representatives, attorneys, agents, employees, and consultants from and against all claims, suits, actions, losses, and liability of every kind, nature, and description, including but not limited to claims and fines of Regulatory Agencies and reasonable attorneys' fees and consultants' fees, directly or indirectly arising out of, connected with, or resulting from the exposure of persons or property to pre-existing Hazardous Substances, pollutants, or other toxic

substances or contaminants encountered at the Site or the Project during the performance of the Work which were not indicated on the reports and information provided by the County, other information reasonably available to Design-Build Entity, visual observation, or reasonable investigation.

13.6 Suspension of Work. The County may, without cause, order Design-Build Entity in writing to suspend, delay, or interrupt Work in whole or in part for such period of time as the County may determine. An adjustment shall be made for increases in cost of performance of the Contract Documents caused by any such suspension, delay, or interruption calculated using the measures set forth in Document 01 26 00 (Contract Modification Procedures). No adjustment shall be made to the extent that: (a) performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which Design-Build Entity is responsible; or (b) an equitable adjustment is made or denied under another provision of the Contract Documents; or (c) the suspension of work was the direct or indirect result of Design-Build Entity's failure to perform any of its obligations. Adjustments made in cost of performance may have a mutually agreed Fixed Percentage Rates For Indirect Costs but, if the parties cannot so agree, Design-Build Entity may file a Claim under Article 12 (Claims by Design-Build Entity) of this Document 00 72 53 (General Conditions).

13.7 Force Majeure.

13.7.1 Events. Neither the County or Design-Build Entity shall be in breach of the Contract for a failure to perform any of their obligations under the Contract to the extent the delay in performance or inability to perform is caused by flood, lightning, earthquake, fire, explosion, epidemic, quarantine, hurricane, tornado, storm, war (declared or undeclared), riot, or similar civil disturbance, strikes, work stoppages, lockouts, and other labor disputes, acts of nature or the public enemy (including acts of terrorism), blockade, insurrection, revolution that is not within the party's reasonable control or reasonable advance planning and was not known as of the effective date of the Contract (a "Force Majeure Event"). Neither the County nor Design-Build Entity shall be excused to the extent a Force Majeure Event results from that party's negligence or failure to perform any obligations under the Contract including failure to reasonably anticipate ascertainable events or its failure to utilize commercially reasonable work-around or alternate solutions.

13.7.2 Exclusions. None of the following are a Force Majeure Event:

13.7.2.1 Strikes, work stoppages, and other labor disputes (including collective bargaining disputes, and lockouts) directed at Design-Build Entity or with regard to Work by a Subcontractor on the Project Site, unless part of a general strike;

13.7.2.2 Shortage, cost increases, or unavailability of materials and equipment, except to extent due to Force Majeure otherwise excusable hereunder;

13.7.2.3 Shortage, unavailability, or cost of labor;

13.7.2.4 Breakage or improper handling of materials and equipment;

13.7.2.5 Conduct of any Subcontractors or Design-Build Entity suppliers;

13.7.2.6 Reasonably foreseeable climatic conditions;

- 13.7.2.7 Delays in transportation, except to the extent due to an independent Force Majeure Event;
 - 13.7.2.8 Delay or denial of any permit or utility approval Design-Build Entity is required to obtain; or
 - 13.7.2.9 Delays of delivery of equipment by any Subcontractor for any reason (unless due to a Force Majeure Event) or the failure of any such equipment to conform to the quality and specifications set forth in any subcontract.
- 13.7.3 Notice. Any party claiming excuse of nonperformance under the Contract based on Force Majeure Event shall give the other party notice describing the particulars of the Force Majeure Event promptly after its occurrence, but in no event more than five (5) Days after the claiming party becomes aware of such occurrence.
- 13.7.3.1 Within fifteen (15) Days after giving notice of the Force Majeure Event, the claiming party shall give the other party an estimate of the Force Majeure Event's expected duration and probable impact on the Work. The claiming party shall continue to furnish the other party with timely regular reports during the continuation of the Force Majeure Event.
 - 13.7.3.2 The claiming party shall give the other party notice within five (5) Days of the cessation of all or part of the Force Majeure Event.
- 13.7.4 Mitigation and Management. Both the County and Design-Build Entity shall immediately exercise commercially reasonable efforts to mitigate or limit the impact to the Work and damages to each other as a result of the Force Majeure Event and shall begin activities to correct or cure the event or condition excusing performance.
- 13.7.4.1 Design-Build Entity shall continue to perform any unaffected Work.
 - 13.7.4.2 Design-Build Entity and the County shall meet to agree upon a course of action to manage the impact of the Force Majeure Event and provide information to all interested parties.
 - 13.7.4.3 The claiming party's suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event.
 - 13.7.4.4 No default of the claiming party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall be excused as a result of the Force Majeure Event.
- 13.7.5 Resulting Impact. If Design-Build Entity, after performing the mitigation efforts described in Paragraph 13.7.4, cannot, in the absence of incurring cost or impacting the critical path elements of the Project Master Schedule, overcome the effects of the Force Majeure Event, Design-Build Entity will be entitled to a Change Order to the extent Design-Build Entity can substantiate the adverse impact in accordance with Article 14 (Modifications of the Contract Documents) below. Changes resulting from Force Majeure Event shall be limited to schedule

adjustments, to the extent Design-Build Entity demonstrates actual schedule delay caused solely by the effects of the Force Majeure Event, unless the County elects to expedite or make other adjustments instead of adjusting the Project Master Schedule.

13.7.5.1 The County will compensate Design-Build Entity for the direct costs it incurs as a result of Force Majeure Event, to the extent that the County is satisfied that such costs are (a) part of a County-approved mitigation/recovery plan, and (b) reasonable and do not include any profit/fee or overhead.

13.7.5.2 With respect to payments made by the County to Design-Build Entity for changes for a Force Majeure Event, Design-Build Entity shall reimburse such amounts to the extent such amounts are recovered from insurance coverages provided under the Contract or are reduced by any savings or costs not incurred.

13.7.6 Termination for Force Majeure. County may terminate the Contract for convenience if delays to the entire Project due to a Force Majeure Event exceed eighteen (18) months in the aggregate.

13.8 Termination of Contract for Cause. Design-Build Entity shall be in default of the Contract and the County may terminate Design-Build Entity's right to proceed under the Contract Documents, in whole or in part, from time to time, for cause:

13.8.1 Should Design-Build Entity make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged bankrupt or insolvent, be the subject of an involuntary petition in bankruptcy which is not dismissed within thirty (30) Days, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Design-Build Entity in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian, or liquidator of the Design-Build Entity or of all or any substantial part of the properties of Design-Build Entity, or if Design-Build Entity, its officers, directors, or shareholders, take action to dissolve or liquidate Design-Build Entity; or

13.8.2 Should Design-Build Entity commit a breach of the Contract Documents, the County may declare Design-Build Entity in default due to the breach, however, the County shall allow Design-Build Entity an opportunity to cure such breach within ten (10) Days of the date of written notice from the County to Design-Build Entity providing notice of the default; or, if such breach is curable but not curable within such ten (10) Day period, within such period of time as is reasonably necessary to accomplish such cure promptly. In order for Design-Build Entity to avail itself of a time period in excess of ten (10) Days, Design-Build Entity must provide the County within the ten (10) Day period with a written plan acceptable to the County to cure said breach promptly which includes, for example, evidence of necessary resources, Subcontractor commitments, schedules, and recovery schedules meeting Contract Document requirements and showing a realistic and achievable plan to cure the breach promptly Design-Build Entity must then diligently commence and continue such cure according to the written plan; or

- 13.8.3 Should Design-Build Entity violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license, or order of any governmental agency applicable to the Project or Work and does not cure such violation within ten (10) Days of the date of the written notice from the County to Design-Build Entity demanding such cure; or, if such failure is curable but not curable within such ten (10) Day period, within such period of time as is reasonably necessary to promptly accomplish such cure promptly. In order for Design-Build Entity to avail itself of a time period in excess of ten (10) Days, Design-Build Entity must provide the County within the ten (10) Day period with a written plan to cure said violation acceptable to the County, and then diligently commence and continue performance of such cure according to the written plan.
- 13.8.4 Should Design-Build Entity at any time refuse or neglect to supply sufficient materials or workers to complete the Contract and the Work as provided herein, for a period of ten (10) Days or more after written notice thereof by County, County at its option may furnish the same and deduct the reasonable expenses thereof from the Contract Sum, may terminate the Contract after notice to Design-Build Entity, or may pursue any other remedies available at law or equity.
- 13.8.5 If the County at any time reasonably believes that Design-Build Entity is or may be in default under its Contract, the County may in its sole discretion notify Design-Build Entity of this fact and request written assurances from Design-Build Entity of performance of the Contract and a written plan from Design-Build Entity to remedy any failures to perform the terms of the Contract which the County may advise Design-Build Entity of in writing. Design-Build Entity shall, within ten (10) Days of the County's request, deliver a written cure plan which meets the requirements of the written plan deliverable under Paragraphs 13.8.2 or 13.8.3 above. Failure of Design-Build Entity to provide written adequate assurances of performance and the required written plan will constitute a material breach of the Contract.
- 13.8.6 In event of termination for cause, the County shall immediately serve written notice thereof upon Surety and Design-Build Entity. Design-Build Entity and Surety shall have the rights and obligations set forth in the Performance Bond. Subject to the Surety's rights under the Performance Bond (which rights are waived upon a default under the Performance Bond), the County may take over the Work and prosecute it to completion by contract or by any other methods it may deem advisable.
- 13.8.7 In the event of termination by the County for cause,
- 13.8.7.1 The County may, subject to any prior rights of the Surety:
- .1 Exclude Design-Build Entity from the Site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Build Entity;
 - .2 Accept assignment of subcontracts pursuant to Paragraph 13.10 below; and
 - .3 Finish the Work by whatever reasonable method the County may deem expedient. Upon written request of Design-Build Entity, the County shall furnish to Design-Build Entity a detailed accounting of the costs incurred by the County in finishing the Work.

- 13.8.7.2 When the County terminates Design-Build Entity's performance of the Work for default, Design-Build Entity shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the GMP exceeds costs of finishing the Work, including the costs of engaging a replacement Design-Build Entity and other damages incurred by the County and not expressly waived, such excess shall be paid to Design-Build Entity. If such costs and damages exceed the unpaid balance, Design-Build Entity shall pay the difference to the County.
- 13.8.7.3 Design-Build Entity shall deliver to the County within three (3) Business Days possession of the Work in its then condition, including but not limited to, all designs, engineering, Project records, cost data of all types, Drawings and Specifications, contracts with vendors and Subcontractors, and all other documentation associated with the Project, and all construction materials, supplies, and aids dedicated solely to performing Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. Design-Build Entity shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this Paragraph 13.8 (Termination of Contract for Cause) shall not be interpreted to diminish any right which the County may have to claim and recover damages for any breach of the Contract, but rather, Design-Build Entity shall compensate the County for all loss, cost, damage, expense, and/or liability suffered by the County as a result of such termination and failure to comply with the Contract Documents.
- 13.8.7.4 Except as otherwise provided in the Contract Documents, the County's rights under this Paragraph 13.8.6 shall be specifically enforceable to the greatest extent permitted by law. The County shall, to the extent applicable, have all other rights and remedies set forth in any other Contract Document.
- 13.8.8 The County may terminate for cause portions or parts of the Work, provided these portions or parts (1) have separate geographic areas from parts or portions of the Work not terminated or (2) are limited to the work of one or more specific trades or Subcontractors. In such case, Design-Build Entity shall cooperate with a completing contractor as required under Article 6 (Construction by the County or by Separate Contractors) of this Document 00 72 53 (General Conditions).
- 13.8.9 In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Design-Build Entity shall have only the recovery rights specified in Paragraph 13.9 (Termination of Contract for Convenience) below. Any Design-Build Entity Claim arising out of a termination for cause, however, shall be made in accordance with Article 12 (Claims by Design-Build Entity) of this Document 00 72 53 (General Conditions). No other loss cost, damage, expense, or liability may be claimed, requested, or recovered by Design-Build Entity.

13.9 Termination of Contract for Convenience.

13.9.1 The County may terminate performance of the Work under the Contract Documents in accordance with this clause in whole or in part, or from time to time in part, for the County's convenience and without cause, and without prejudice to any other right or remedy of County, whenever the County shall determine that termination is in the County's best interest. Termination shall be effected by the County delivering to Design-Build Entity written notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated, and the effective date of the termination.

13.9.2 After receiving a notice of termination under Paragraph 13.9.1 above, and except as otherwise directed by the County, Design-Build Entity shall:

13.9.2.1 Stop Work under the Contract Documents on date and to extent specified in the notice of termination;

13.9.2.2 Place no further orders or subcontracts for materials, services, equipment, or facilities except as necessary to complete portion of Work under the Contract Documents which is not terminated;

13.9.2.3 If not directed by the County to assign the same, terminate all orders and Subcontractors, or assign to the County in manner, at times, and to extent directed by the County, all right, title, and interest of Design-Build Entity under orders and subcontracts. The County shall have the right, in its sole discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;

13.9.2.4 Settle all outstanding liabilities and all claims arising out of any termination of orders and subcontracts, with approval or ratification of the County to extent the County may require. The County's approval or ratification shall be final for purposes of this Paragraph 13.9 (Termination of Contract for Convenience);

13.9.2.5 Transfer title to the County, and deliver in the manner, at the times, and to the extent, if any, directed by the County, all fabricated or unfabricated parts, Work in process, completed Work, supplies, and all other material produced as part of, or acquired in connection with performance of, Work terminated by the notice of termination, and completed or partially completed drawings, drawings, specifications, information, and other property which, if the Project had been completed, would have been required to be furnished to the County;

13.9.2.6 Use its best efforts to sell, in manner, at times, to extent, and at price or prices that the County directs or authorizes, any property of types referred to in this Paragraph 13.9.2, but Design-Build Entity shall not be required to extend credit to any purchaser and may acquire any such property under conditions prescribed and at price or prices approved by the County. Proceeds of transfer or disposition shall be applied to reduce payments to be made by the County to Design-Build Entity under the Contract Documents or shall otherwise be credited to the price or cost of Work covered by the Contract Documents or paid in such other manner as the County may direct;

- 13.9.2.7 Complete performance of the part of the Work which was not terminated by the notice of termination; and
 - 13.9.2.8 Take such action as may be necessary, or as the County may direct, to protect and preserve all property related to the Contract Documents which is in Design-Build Entity's possession or control and in which the County has or may acquire an interest.
- 13.9.3 After receipt of a notice of termination under Paragraph 13.9.1 above, Design-Build Entity shall submit to the County its termination Claim, in form and with all certifications required by the Contract Documents. Design-Build Entity's termination Claim shall be submitted promptly, but in no event later than two (2) months from effective date of the termination. Design-Build Entity and the County may agree upon the whole or part of the amount or amounts to be paid to Design-Build Entity because of a total or partial termination for convenience of Work. If Design-Build Entity and the County fail to agree on the whole amount to be paid to Design-Build Entity because of the termination for convenience of the Work, County's total liability to Design-Build Entity by reason of the termination shall be the total (without duplication of any items) of:
- 13.9.3.1 The reasonable cost to Design-Build Entity, without profit, for all Work performed prior to the effective date of the termination, including the Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the Project Master Schedule and the Schedule of Values. Deductions shall be made for cost of materials to be retained by Design-Build Entity, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits or offsets against cost of Work. Reasonable cost will include reasonable amount for Project overhead and general administrative overhead.
 - 13.9.3.2 When, in the County's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of the Contract Documents and excessive actual cost shall be disallowed.
 - 13.9.3.3 Reasonable costs to Design-Build Entity of handling material returned to vendors, delivered to the County, or otherwise disposed of as directed by the County.
 - 13.9.3.4 A reasonable amount for Design-Build Entity's internal administrative costs in preparing termination Claim.
 - 13.9.3.5 The County shall have no obligation to pay Design-Build Entity under this Paragraph 13.9 (Termination of Contract for Convenience) unless and until Design-Build Entity provides the County with updated and acceptable As-Built Drawings and Project record documents for Work completed prior to termination.
 - 13.9.3.6 Reasonable demobilization costs and reasonable payments made to Subcontractors or suppliers on account of termination.

- 13.9.4 In no event shall the County be liable for unreasonable costs incurred by Design-Build Entity or Subcontractors after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, the cost of or anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, unreasonable post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety costs of any type, costs of preparing and submitting Design-Build Entity's Qualifications and Proposal, attorneys' fees of any type, and all other costs relating to prosecution of a Claim or lawsuit.
- 13.9.5 In arriving at the amount due Design-Build Entity under this provision there shall be deducted in whole or in the appropriate part(s) if the termination is partial:
- 13.9.5.1 All unliquidated advances or other payments on account previously made to Design-Build Entity, including without limitation all payments which are applicable to the terminated portion of the Contract Documents,
- 13.9.5.2 Any claim which the County may have against Design-Build Entity in connection with the Contract Documents, and
- 13.9.5.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Design-Build Entity or sold under provisions of Paragraph 13.9 (Termination of Contract for Convenience), and not otherwise recovered by or credited to the County.
- 13.10 Contingent Assignment of Subcontracts. Design-Build Entity hereby assigns to County all of its right, title, and interest in, to, and under each Subcontract, including any agreement for the provision of Project Work by the Architect or other design Subconsultants, now or hereafter entered into by Design-Build Entity for performance of any part of the Work, provided that:
- 13.10.1 The assignment shall only be effective after the County's termination of Design-Build Entity's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) pursuant to Paragraphs 13.8 (Termination of Contract for Cause) or 13.9 (Termination of Contract for Convenience) above;
- 13.10.2 The assignment is effective only for the Subcontracts which the County expressly accepts by notifying the Subcontractor in writing;
- 13.10.3 The assignment is subject to the prior rights, if any, of the Surety, obligated by the Performance Bond provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;
- 13.10.4 After the effectiveness of an assignment, Design-Build Entity shall, at its sole cost and expense (except as otherwise provided in Paragraphs 13.8 (Termination of Contract for Cause and Written Adequate Assurances of Performance) or 13.9 (Termination of Contract for Convenience)), sign all instruments and take all actions reasonably requested by the County to evidence and confirm the effectiveness of the assignment in the County; and
- 13.10.4.1 Nothing in this Paragraph 13.10 (Contingent Assignment of Subcontracts) shall modify or limit any of Design-Build Entity's obligations to the County arising from acts or omissions occurring

before the effectiveness of any Subcontract assignment, including but not limited to all defense, indemnity, and hold harmless obligations arising from or related to the assigned Subcontract;

- 13.10.4.2 The County may accept the assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of Design-Build Entity's rights under the Contract Documents. Such assignment is part of the consideration to the County for entering into the Contract with Design-Build Entity and may not be withdrawn prior to Final Completion.

13.11 Remedies and Contract Integration.

- 13.11.1 Subject to the Contract Document provisions regarding Design-Build Entity Claims, Claim review, and Claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all Claims, counter-claims, disputes, and other matters in question between the County and Design-Build Entity arising out of or relating to Contract Documents, or any breach thereof or the Project, shall be decided in the applicable court of competent jurisdiction located in the State of California, County of Alameda. Each County and Design-Build Entity hereby waive its rights under Code of Civil Procedure § 394 to file a motion to transfer any action or proceeding arising out of the Contract Documents to another venue. All County remedies provided in the Contract Documents shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances the County and Design-Build Entity shall have any and all other equitable and legal rights and remedies which it would have according to law that are not inconsistent with the provisions of the Contract Documents.
- 13.11.2 The Contract Documents, any Contract Modifications, and Change Orders shall represent the entire and integrated agreement between the County and Design-Build Entity regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents, and any Contract Modifications and Change Orders, shall supersede any and all prior negotiations, representations, or agreements, written or oral, express or implied, that relate in any way to the subject matter of the Contract Documents or written modifications. The County and Design-Build Entity represent and agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written modification in sole reliance upon the information set forth or referenced in the Contract Documents or Contract Modifications and the parties are not and will not rely on any other information.
- 13.11.3 In any proceeding to enforce the Contract Documents, Design-Build Entity and the County agree that the finder of fact shall receive detailed instructions on the meaning and operation of the Contract Documents, including their conditions, limitations of liability, and remedies clauses, claims procedures and any other provisions impacting major defenses and theories of liability of the parties. Detailed findings of fact shall be requested.
- 13.11.4 Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify, or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or

other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

13.11.5 No action or failure to act by the County or the County's Representative will constitute a waiver of a right afforded them under the Contract, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by the County or County's Representative of any condition, breach, or default will constitute a waiver of any other condition, breach, or default; nor will any such waiver constitute a continuing waiver. No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against the County, the County's Representative, or Design-Build Entity.

13.12 Patents. Fees or claims for any patented invention, article, or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof shall be included in the Initial GMP or Final GMP price, if applicable, for doing the Work. Design-Build Entity shall defend, indemnify, and hold harmless the County and each of its officers, employees, consultants (including without limitation County consultants) and agents, including, but not limited to, the County Board of Supervisors and each County Representative, from all damages, claims for damages, costs or expenses in law or equity, including attorneys' fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract Documents infringes on the patent rights, copyright, trade name, trademark, service mark, trade secret, or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which Design-Build Entity agrees to indemnify and hold harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnitee or ordered by a court or administrative body of any competent jurisdiction.

13.13 "Or Equal" Substitution for Patented and Specified Articles.

13.13.1 Except as noted specifically in Specifications, whenever in Specifications, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or equal" and Design-Build Entity may offer any substitute material or process that Design-Build Entity considers equal in every respect to that so designated and if material or process offered by Design-Build Entity is, in opinion of the County, equal in every respect to that so designated, its use will be approved. Design-Build Entity may utilize this right only by timely submitting a substitution request consistent with Document 01 60 00 (Product Requirements) as provided in Document 00 21 16 (Request for Qualifications and Proposal – Instructions to Proposers). A substitution will be approved only if it is permitted under Document 00 21 16 (Request for Qualifications and Proposal – Instructions to Proposers) following award of the Contract and only if it is a true "equal" item in every aspect of its design and quality, including but not limited to its dimensions, weights, service requirements, durability, functioning, impact on contiguous construction elements, overall schedule, and design.

13.14 Interest of Public Officers. No representative, officer, or employee of the County, no member of the governing body of the locality in which the Project is situated, no member of the locality in which the County was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during the tenure of the official or for one (1) year thereafter, shall, as principal, agent,

attorney, or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.

13.15 Limit of Liability. NEITHER THE COUNTY, COUNTY BOARD OF SUPERVISORS, NOR THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, CONSULTANTS, OR AGENTS (INCLUDING WITHOUT LIMITATION COUNTY CONSULTANTS) SHALL HAVE ANY LIABILITY TO DESIGN-BUILD ENTITY FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, EXCEPT TO THE LIMITED EXTENT THAT THESE CONTRACT DOCUMENTS OR APPLICABLE PUBLIC CONTRACTING STATUTES MAY SPECIFY THEIR RECOVERY.

13.16 Severability. Any provisions or portions thereof of these Contract Documents that are prohibited by, unlawful, or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof in the Contract. If the provisions of such applicable law may be waived, they are hereby waived to the end that the Contract may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portions thereof of the Contract are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of the provisions and the Contract shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

13.17 Contract Documents and Exercise of Contract Responsibilities.

13.17.1 The Contract Documents shall not be construed to create a contract of any kind (a) between the County or its representatives and a Subcontractor of any tier (including, but not limited to, designers, architects, and engineers) or (b) between any persons or entities other than the County and Design-Build Entity. Design-Build Entity is fully responsible for all acts, omissions, or negligence of its Subcontractors of any tier, suppliers, and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Design-Build Entity just as Design-Build Entity is responsible for Design-Build Entity's own acts, omissions, or negligence.

13.17.2 The County and its agents do not, in exercising their responsibilities and authorities under the Contract Documents, assume any duties or responsibilities to any Subcontractor, subconsultant, or supplier, nor does the County or its agents assume any duty of care to Design-Build Entity, its Subcontractors, or suppliers.

13.18 Title to Work: No Liens. Legal title to all Work shall pass to and vest in the County as Work is performed, and title to all materials and equipment shall pass to and vest in the County when such materials and equipment are delivered to the Site (or as soon as title passes from the vendor or supplier thereof). To the extent of payment by the County, Design-Build Entity shall keep the Site and all materials and equipment free and clear of all liens, stop payment notices, and charges arising out of performance of the Contract, and shall indemnify, defend, and hold harmless those identified in Paragraph 13.3.1 above from the claims, suits, actions, losses, and liabilities described therein, including those which are a result of any breach of this responsibility and shall defend any claim or suit brought against any party required to be indemnified hereunder based upon any such claim of title or lien. Design-Build Entity shall promptly pay each Subcontractor the amount to which such Subcontractor is entitled, and shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its respective Subcontractors in a similar manner.

13.19 Proprietary or Confidential Information of County. Design-Build Entity understands and agrees that, in the performance of the Work under the Contract or in the contemplation thereof, Design-Build Entity may have access to private or confidential information, which may be owned or controlled by the County, and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the County. Design-Build Entity agrees that all information disclosed by the County to Design-Build Entity shall be held in confidence and used only in performance of the Contract. Design-Build Entity shall exercise the same standard of care to protect such information, as a reasonably prudent consultant would use to protect its own proprietary data.

13.20 Ownership of Results/Works for Hire.

13.20.1 The Contract Documents, and all copies thereof, furnished to, or provided by, Design-Build Entity are and shall remain the property of the County. The County and Design-Build Entity explicitly agree that all materials and documents developed in the performance of the Contract are the property of the County. The County shall have unlimited rights, for the benefit of the County, in all engineering analysis, drawings, designs, specifications, notes, and any other documentation and other Work developed in the performance of the Contract for the Project, including the right to reuse details of the design on any other County work at no additional cost to the County. Design-Build Entity agrees to, and hereby does, grant to the County a royalty-free license to all such data that Design-Build Entity may cover by copyright and to all designs as to which Design-Build Entity may assert any right or establish any claim to under the patent or copyright laws. Design-Build Entity, for a period up to ten (10) years from the date of Final Completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the request of the County. Design-Build Entity, its Subcontractors, and its Subconsultants, shall have the right, subject to the County's prior written approval for accuracy of representation and content, to include images or the likeness of the Project in any of its publications or marketing materials.

13.20.2 Any and all artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes, or any original works of authorship created by Design-Build Entity or its Subcontractors or designers in connection with Work performed under the Contract shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the County.

In the event that it is ever determined that any works created by Design-Build Entity or its Subcontractors or designers under the Contract are not works for hire under United States law, Design-Build Entity hereby assigns all copyrights to such works to the County. With the prior written approval of the County, Design-Build Entity may retain and use copies of such works for reference and as documentation of its experience and capabilities.

13.20.3 Design-Build Entity agrees to reasonably assist the County in every proper way to secure the County's rights in any copyrights, patents, mask works rights, or other intellectual property rights relating, including the disclosure to the County of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments, and all other instruments which the County shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, the sole and exclusive rights,

title, and interest in and to such copyrights, patents, mask works rights, or other intellectual property rights relating thereto. Design-Build Entity further agrees that its obligation to execute or cause to be executed, any such instrument or papers shall continue after the termination of the Contract. If the County is unable to secure Design-Build Entity's signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering the original works of authorship assigned to the County as above, then it hereby irrevocably designates and appoints the County and as the agent and attorney in fact to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by Design-Build Entity.

13.20.4 To the furthest extent permitted by law, the County shall assume the defense of, and indemnify and hold harmless, Design-Build Entity and all of its members, officers, directors, representatives, attorneys, agents, employees, and consultants from and against all claims, suits, actions, losses, and liability of every kind, nature, and description, including but not limited to claims and fines of Regulatory Agencies directly or indirectly arising out of or connected with or resulting from: (a) amendments or modifications of any Design Deliverables made without the prior written consent of Design-Build Entity; and (b) County's use of the Design Deliverables or any part of the Design Deliverables on a project other than the Project.

13.21 Compliance with Americans with Disabilities Act. Design-Build Entity acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services, and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Design-Build Entity shall provide the Work Specified in the Contract in a manner that complies with the ADA and any and all other applicable federal, state, and local disability rights legislation. Design-Build Entity agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under the Contract and further agrees that any violation of this prohibition on the part of Design-Build Entity, its Subcontractors, Subconsultants, designers, employees, representatives, agents, or assignees shall constitute a material breach of the Contract.

13.22 Disputes. Nothing in this paragraph shall allow Design-Build Entity to discontinue the Work during the course of any dispute and Design-Build Entity's failure to continue the Work during any and all disputes shall be considered a material breach of the Contract. Design-Build Entity agrees that the existence or continued existence of a dispute does not excuse performance under any provision of the Contract, including but not limited to, the time to complete the Work. Design-Build Entity also agrees that should Design-Build Entity discontinue the Work due to a dispute or disputes; the County may terminate the Contract for cause. Design-Build Entity further agrees that should Design-Build Entity not properly perform the Work due to a dispute or disputes, any and all Claims, whether in law or in equity, Design-Build Entity may have against the County and its officers, directors, agents, representatives, consultants, and employees, whether such Claims are pending, anticipated or otherwise, shall be deemed to have been waived and forever foreclosed. Notwithstanding the above, Design-Build Entity, pursuant to Document 01 29 00 (Payment Procedures), will be entitled to be paid by the County for all undisputed Work and will have the right to stop work, and ultimately to terminate the Contract, if not timely paid by the County for any undisputed Work.

- 13.23 Statute of Limitations. As between the parties to the Contract: as to all acts or failures to act by either party to the Contract, any applicable statute of limitations shall commence to run on the date of issuance by County of the final Certificate for Payment, or the effective date of a termination of all of the Contract, whichever is earlier, except for Latent defects, in which case the cause of action shall accrue on discovery of the Latent defect and its cause. Nothing herein will modify any right or obligation under Code of Civil Procedure §§ 337.1 and 337.15.
- 13.24 Waivers. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of the Contract, including the timing of any such performance, shall not be a waiver of any right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.
- 13.25 Beneficial Occupancy. The County reserves the right, at its option and convenience, to occupy any part of the Work at any time prior to Final Completion upon ten (10) Days' notice to Design-Build Entity. Such occupancy is herein referred to as "Beneficial Occupancy" or "Beneficially Occupied." Beneficial Occupancy shall be subject to the following conditions:
- 13.25.1 The County Representative will inspect the portion of the Project to be Beneficially Occupied and prepare a list of items to be completed or corrected prior to completion. Prior to Beneficial Occupancy, County will issue a Certificate of Beneficial Occupancy on County's form.
- 13.25.2 Beneficial Occupancy by the County shall not be construed by Design-Build Entity as an acceptance by County of that portion of the Work which is to be occupied.
- 13.25.3 Beneficial Occupancy by the County shall not constitute a waiver of existing claims of the County or Design-Build Entity against each other.
- 13.25.4 Unless otherwise agreed to by the parties, Design-Build Entity shall provide, in the areas Beneficially Occupied by County and on a twenty-four (24) hour and seven (7) Day week basis as required until the Work is complete and final acceptance, utility services, heating, and cooling in the areas beneficially occupied and for systems in such areas which are in operable condition at the time of Beneficial Occupancy. All costs of and responsibility for the maintenance of Beneficially Occupied areas and for the operation and maintenance of Design-Build Entity's equipment in such areas shall remain with Design-Build Entity during Beneficial Occupancy until the Work is completed and final acceptance.
- 13.25.5 The guarantees to repair as defined in the Contract will commence upon the first date of Beneficial Occupancy of any portion of the Construction Work actually occupied by the County pursuant to this Paragraph 13.25 and equipment or systems "fully utilized" by the County. Equipment or systems shall not be considered "fully utilized" for the purpose of this Paragraph 13.25.5 until all parts of the Project served by the equipment or systems are Beneficially Occupied.
- 13.25.6 The County shall pay for any costs arising from County's Beneficial Occupancy, including the costs of providing security, janitorial, and utility services in areas that are Beneficially Occupied by the County.

- 13.25.7 The County will use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of Design-Build Entity's remaining Work.
- 13.25.8 Design-Build Entity shall not be required to repair damage caused by the County in its Beneficial Occupancy.
- 13.25.9 Except as may be required pursuant to Paragraphs 13.25.4, 13.25.6, and 13.25.8 above, there shall be no added cost to County due to Beneficial Occupancy.
- 13.25.10 During Beneficial Occupancy, Design-Build Entity shall continue to maintain all insurance required by the Contract in full force and effect.
- 13.26 Successors and Assigns. The County and Design-Build Entity respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, in whole or in part, without prior written consent of the other party. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all of its obligations under the Contract.
- 13.27 Correction of Errors and Omissions. Design-Build Entity agrees to correct any error or omission in the Construction Documents or Contract Documents at no additional cost to the County.
- 13.28 Endorsements. Design-Build Entity shall not in its capacity as a contractor with County publicly endorse or oppose the use of any particular brand name or commercial product without the prior approval of the Board of Supervisors. In its County contractor capacity, Design-Build Entity shall not publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely accepted scientific basis for such claims or without the prior approval of the Board of Supervisors. In its County contractor capacity, Design-Build Entity shall not participate or appear in any commercially produced advertisements designed to promote a particular brand name or commercial product, even if Design-Build Entity is not publicly endorsing a product, as long as Design-Build Entity's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of County. Notwithstanding the foregoing, Design-Build Entity may express its views on products to other contractors, the Board of Supervisors, County officers, or others who may be authorized by the Board of Supervisors or by law to receive such views.
- 13.29 Use of Private Property. Design-Build Entity shall not use private property for any purpose in connection with the Project absent a prior, written agreement with the affected property owner.
- § 13.30 Survival of Provisions. The Contract provisions relating to any obligation to provide insurance or indemnity, the duty to maintain confidentiality of Project information, any waiver, warranty, guarantee or representation, any County right to Subcontractor assignment, joint or direct payment, or audit right given by Design-Build Entity to County, the Claims and dispute resolution provisions, and all other provisions of the Contract Documents which by their nature are not expected to be performed during the course of design and construction shall be deemed to survive suspension, expiration, termination, completion, or cancellation of the Contract and shall be binding upon Design-Build Entity

and County until any action thereunder is barred according to terms in the Contract Documents or by the applicable statute of limitations or statute of repose.

14. MODIFICATIONS OF THE CONTRACT DOCUMENTS.

14.1 Changes, Modifications, and Force Account Work.

- 14.1.1 No changes in the Work or modifications or deviations from the Contract Documents, including but not limited to the Drawings and Specifications will be permitted except by written Change Order, written Field Change Directive, Construction Change Directive, or Contract Modification, issued in accordance with Document 01 26 00 (Contract Modification Procedures), collectively referred to as a "Contract Modification."
- 14.1.2 The County may, without notice to the Sureties, make alterations, deviations, additions to, or deletions from the Contract Documents; increase or decrease the quantity of any item or portion of the Work; expand, contract, or otherwise change the Contract Time; delete any item or portion of the Work; and require extra Work. Design-Build Entity shall perform such work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. In the case of any ordered extra Work, the County reserves the right to furnish all or portions of associated labor, material, and equipment, which Design-Build Entity shall accept and use without payment for costs, markup, profit, or otherwise for such County-furnished labor, materials, and equipment.
- 14.1.3 Changes affecting the Contract Time or Contract Sum of the Work shall be set forth in a written Change Order that shall specify: (a) the work performed in connection with the change to be made; (b) the amount of the adjustment of the Contract Sum, if any, and the basis for compensation for the work ordered; and (c) the extent of the adjustment in the Contract time, if any. A Change Order will not become effective until signed by the County.
- 14.1.4 A Change Order will become effective when signed by the County. If the County exercises its right to decide disputed issues pertaining to changed Work as set forth in Articles 12 (Claims by Design-Build Entity) and 14 (Modifications of the Contract Documents) of this Document 00 72 53 (General Conditions), then the resulting Unilateral Change Order shall be effective when signed by County.
- 14.1.5 Changes not affecting the Contract Time or Contract Sum of the Work, in the County's discretion, may be set forth in a written RFI-Reply executed by the County. Execution of an RFI-Reply constitutes Design-Build Entity's agreement to make the specified change without change to the Contract Sum or the Contract Time, which shall constitute a Field Change Directive.
- 14.1.6 Changes or deviations from Contract Documents affecting the Contract Time or Contract Sum of the Work shall not be made without the authority of an effective Change Order or Construction Change Directive as provided in Document 01 26 00 (Contract Modification Procedures), except in cases of emergency discussed in Paragraph 16.4 (Emergencies) of this Document 00 72 53 (General Conditions).
- 14.1.7 All Contract Modifications shall be diligently carried out by Design-Build Entity in accordance with the Contract Documents. If changes ordered in design,

workmanship, or materials are of such a nature as to increase or decrease the cost of any part of the Work, the price fixed in the Contract Documents shall be increased or decreased by the amount that Design-Build Entity and the County may agree upon as a reasonable and proper amount for the cost increase or decrease.

If an agreement cannot be reached, then the County shall reach a determination, which shall be final, subject to Design-Build Entity's rights under Article 12 (Claims by Design-Build Entity) of this Document 00 72 53 (General Conditions). In all cases Design-Build Entity shall perform the changed Work as directed by the County subject to Design-Build Entity's rights under Article 12. In cases where the County reaches such a determination, a Unilateral Change Order shall be effective even if signed by the County only.

- 14.1.8 Design-Build Entity shall, upon the County's request, permit inspection of the original unaltered Project price estimates, subcontract agreements, purchase orders relating to the change, and documents substantiating all costs associated with its cost proposal or Claims arising from changes in the Work.
- 14.1.9 Changes in the Work made pursuant to this Article 14 (Modifications of the Contract Documents) and extensions of Contract Time necessary by reason thereof shall not in any way release the guarantees/warranties given by Design-Build Entity pursuant to provisions of the Contract Documents, nor shall such changes in the Work relieve or release the Sureties of bonds executed pursuant to said provisions. The Sureties, in executing such bonds, shall be deemed to have expressly agreed to any such change in the Work and to any extension of time made by reason thereof.
- 14.1.10 Procedures for Modifications of Contract Documents and for calculating the cost of extra Work are given in Document 01 26 00 (Contract Modification Procedures). Regarding delay and impact costs of any nature, Design-Build Entity may not seek delay compensation for On-Site or Off-Site costs based on formulas, e.g., "Eichleay" or other formula. Rather, Design-Build Entity shall prove actual costs that were actually caused by the County caused delays. If Design-Build Entity requests compensation for delay to the construction, then Design-Build Entity shall prove and document actual Direct costs the cost categories and procedures in Document 01 26 00 (Contract Modification Procedures) in order to request, claim, or prove compensation for delay.
- 14.1.11 Change Orders in excess of the County's approved limit must be approved by the County Board of Supervisors and a Performance Bond rider and Payment Bond rider covering the changed Work executed before proceeding with the changed Work. Design-Build Entity is charged with knowledge of the County's approved Change Order limits and procedures in effect at the applicable time.

14.2 Entire Agreement.

- 14.2.1 The Contract Documents, and any Contract Modifications, shall represent the entire and integrated agreement between the County and Design-Build Entity regarding the subject matter of the Contract and shall constitute the exclusive statement of the terms of the parties' agreement.
- 14.2.2 The Contract Documents, and any Contract Modifications, shall supersede any and all prior negotiations, representations, or agreements, either written or oral,

express or implied, that relate in any way to the subject matter of the Contract or written modifications. The County and Design-Build Entity represent and agree that they are entering into the Contract and any subsequent written modification in sole reliance upon the information set forth in the Contract Documents or Contract Modifications and the parties are not and will not rely on any other information.

- 14.3 Modifications. The Contract Documents may be amended or modified only by a written amendment, Change Order, Field Change Directive, or Construction Change Directive (CCD) issued in accordance with the provisions of the Contract Documents, and particularly this Article 14 (Modifications of the Contract Documents) and Document 01 26 00 (Contract Modification Procedures). The Contract Documents may not be modified or supplemented orally or by implication. To be effective, any modification to the Contract Documents must be in writing and must be signed by an authorized representative of the County and satisfy all other requirements of this Document 00 72 53 (General Conditions). A CCD shall only be used in the absence of total agreement on the terms of a Change Order and may, upon notice, consist of a Unilateral Change Order executed by the County only.

15. **TIME ALLOWANCES.**

15.1 Time Allowance for Performance of Contract.

- 15.1.1 When the Contract has been signed by Design-Build Entity and the County, and funds necessary to make payments as required under Contract are available, the County will serve a Notice to Proceed with the design and preconstruction, through Final GMP (Phase I) upon Design-Build Entity to that effect, either by depositing notice in a post office or post office box regularly maintained by United States Postal Service in a pre-paid wrapper directed to Design-Build Entity at its legal address, or (at the County's option) by delivery by other means at Design-Build Entity's legal address. Subsequent phases of the Work approved by County in its sole discretion, will be authorized by separate notices to proceed.
- 15.1.2 The start date for Contract Time shall be the date indicated in the Notice to Proceed for Phase I.
- 15.1.3 By signing the Agreement, Design-Build Entity represents to the County that the Contract Time is reasonable for performing the Work and that Design-Build Entity is able to perform the Work within the Contract Time. Design-Build Entity agrees that the County is purchasing the right to have Design-Build Entity present on the Project Site for the full duration of the Contract Time applicable through Phase II, even if Design-Build Entity could finish the Contract in less than the Contract Time. If Design-Build Entity's Project Master Schedule shows completion of the Work in advance of the Contract Time, Design-Build Entity agrees that in the event actual completion occurs, for any reason, after the completion date specified in Design-Build Entity's Project Master Schedule but within the Contract Time, Design-Build Entity shall not be entitled to and waives any claim against the County for delay, disruption, or impact costs or damages including, without limitation claims for extended General Conditions, overhead, and profit.
- 15.1.4 Design-Build Entity shall not, except by agreement or instruction of the County in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by the Contract Documents to be furnished by

Design-Build Entity. The dates of commencement and Substantial Completion of the Work shall not be changed by the effective date of such insurance.

- 15.1.5 Design-Build Entity shall proceed expeditiously with adequate forces and shall achieve Final Completion of the Work within the Contract Time. If the County's Representative determines and notifies Design-Build Entity that Design-Build Entity's progress is such that Design-Build Entity will not achieve Final Completion of the Work within the Contract Time, Design-Build Entity shall immediately and at no additional cost to the County, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays, supplying additional labor, equipment, and facilities and submitting a recovery schedule for re-sequencing performance of the Work or other similar measures as may be required to ensure that the entire Project is completed within the Contract Time. Upon receipt of such notice from the County's Representative, Design-Build Entity shall immediately provide a recovery schedule and notify the County's Representative of all measures to be taken to ensure Final Completion of the Work within the Contract Time.

Design-Build Entity shall reimburse the County for any extra costs or expenses (including the reasonable value of any services provided by County's employees) incurred by the County as the result of such measures.

15.2 Entitlement to Change of Contract Time.

- 15.2.1 The Contract Time may only be changed by Change Order, Construction Change Order Directive, or by Contract Modification and all time limits stated in the Contract Documents are of the essence of the Contract Documents.
- 15.2.2 The Contract Time will be adjusted in an amount equal to the time lost on the critical path of the Project due to the following:
- 15.2.2.1 Changes in the Work ordered by the County;
 - 15.2.2.2 Acts or neglect by the County, or its agents, employees, or consultants, acts or neglect of utility owners, acts or neglect of other contractors performing other Work under contract with the County, provided Design-Build Entity has substantially performed its responsibilities under the Contract Documents, including but not limited to, its cooperation and coordination responsibilities required by the Contract Documents;
 - 15.2.2.3 A Force Majeure Event as defined in Paragraph 13.7 (Force Majeure) above.
 - 15.2.2.4 Impacts to the Project Master Schedule caused by Regulatory Agency review of County-initiated Change Orders in accordance with Document 01 26 00 (Contract Modification Procedures).
 - 15.2.2.5 Impacts to the Project Master Schedule caused solely by Regulatory Agency review of Change Orders that result from governmental or Regulatory Agency requirements in accordance with Document 01 26 00 (Contract Modification Procedures).

- 15.2.2.6 Delays caused by Regulatory Agency's failure or inability to review Design-Build Entity's complete and coordinated documents within the Regulatory Agency review durations published in Design-Build Entity's Project Master Schedule in accordance with the requirements of Paragraph 1.3.7 of Document 01 32 16 (Schedules and Reports).
- 15.2.3 The Contract Time shall not be extended for any cause identified in Paragraph 15.2.2 above, however, unless:
 - 15.2.3.1 Design-Build Entity actually has been prevented from completing any part of the Work within the Contract Time due to delay that is beyond Design-Build Entity's control and due to reasons for which Design-Build Entity is not responsible. (In this regard, delays attributable to and within the control of a Subcontractor, or its Subcontractors, or supplier shall be deemed to be delays within the control of Design-Build Entity);
 - 15.2.3.2 A timely claim for delay is made as provided herein; and
 - 15.2.3.3 Design-Build Entity submits a "Time Impact Analysis" as required under Document 01 32 16 (Schedules and Reports) that demonstrates actual delay to critical path Work activities that actually delay the progress of the Work in the amount of time requested.

15.3 Weather Delays.

- 15.3.1 Delays due to abnormal or adverse weather conditions will not be allowed for weather conditions, which fall within parameters listed in this Paragraph 15.3 (Weather Delays). Adverse weather delays may be allowed only if the number of Days of Project delay due to adverse weather exceeds these parameters on a monthly basis and Design-Build Entity proves that the adverse weather actually caused delay to the completion of the Project. Design-Build Entity shall give written notice of intent to claim an adverse weather day within one (1) Day of the adverse weather day occurring. Rain parameters are as follows, prorated in the individual month Design-Build Entity starts and finishes Work:
 - 15.3.1.1 Rain Days: January, [7]; February, [6]; March, [6]; April, [3]; May, [1]; June, [0]; July, [0]; August, [0]; September, [0]; October, [2]; November, [5]; December, [6].
 - 15.3.1.2 In order to qualify as an adverse weather day with respect to the foregoing parameters, daily rainfall must exceed one-tenth (1/10) of an inch or more at the Oakland WSO AP, California, station, as measured by the National Oceanic & Atmospheric Administration, and Design-Build Entity must prove that the rain actually caused delay as set forth above.
- 15.3.2 Design-Build Entity shall include the foregoing rain parameters as a monthly activity in its Project Master Schedule. If Work on the critical path is affected by rain, Design-Build Entity shall notify the County and request that the Days be moved to the affected activities. Any adverse weather Days remaining shall be considered Project float.

- 15.3.3 Adverse weather delay for rain shall be recognized for the actual period of time Design-Build Entity proves the Completion of the Project was delayed by rain exceeding the Specified parameters. For example, and not by way of limitation, if rain exceeding the Specified parameters does not in fact delay Design-Build Entity's progress on the critical path, then no time extension shall be recognized; and conversely, if Design-Build Entity proves that rain exceeding the Specified parameters causes delay to Design-Build Entity for a period longer than the number of rain Days incurred (e.g., if it rains during grading work), then Design-Build Entity shall be entitled to a time extension equal to the actual period of such delay. Design-Build Entity must verify that adverse weather caused delays in excess of seventy-five percent (75%) of the normal labor and equipment force working on current critical path Work items on the accepted Project Master Schedule for a period of at least five (5) hours, and the crew is dismissed as a result thereof.
- 15.3.4 Design-Build Entity shall take reasonable steps to mitigate potential weather delays, such as de-watering the Site and covering the Work and material that could be affected adversely by weather. Failure to do so shall be cause for the County to not grant a time extension due to adverse weather, where Design-Build Entity could have avoided or mitigated the potential delay by exercising reasonable care.
- 15.4 Notice of Delay. Within ten (10) Days of the beginning of any delay or of becoming aware of any delay, whichever is later, Design-Build Entity shall notify the County, in writing by submitting a notice of delay that shall include a full statement of all anticipated delays resulting from the delay event in question.
- 15.4.1 The notice shall constitute application for an extension of time only if the notice requests an extension and sets forth the impact of the delay on the critical path and Design-Build Entity's estimate of additional time required together with a full recital of causes of unavoidable delays relied upon. Design-Build Entity shall comply with Document 01 32 16 (Schedules and Reports).
- 15.4.2 After receipt of a request for a time extension, with verifiable documents and justifications included, the County will make a decision thereon and will advise Design-Build Entity in writing.
- 15.4.3 No time extensions shall be considered without related documents and justifications necessary for the County to make a determination.
- 15.4.4 No time extensions shall be granted for delays for which Design-Build Entity fails to give timely and proper notice and Design-Build Entity hereby waives any and all damages or other remedies for delay for which timely and proper notice is not given.
- 15.4.5 Any request for extension of time shall be accompanied by Design-Build Entity's written statement that the adjustment claimed is the entire adjustment to which the claimant is entitled as a result of the occurrence of said event and shall include a written schedule document that demonstrates delay to the critical path using a Time Impact Analysis as specified in Document 01 32 16 (Schedules and Reports). The County will determine all claims and adjustments in the Contract Time. No claim for an adjustment in the Contract Time will be valid and such claim will be waived if not submitted in accordance with the requirements of this Paragraph 15.4 (Notice of Delay).

- 15.5 No Damage for Design-Build Entity Caused Delay. Design-Build Entity shall not be entitled to any time extension or compensation for delays costs, direct or indirect, of Design-Build Entity and all Subconsultants, Subcontractors, and suppliers, including without limitation, extended field or home office overhead, field supervision, costs of capital, interest, cost escalation charges, acceleration costs, inefficiencies, or other impacts for any Design-Build Entity caused delays.
- 15.6 Time Extension Without Compensation. Design-Build Entity may receive, in County's sole discretion, a time extension without compensation for: (a) delays resulting from unforeseen events or causes beyond the reasonable control of Design-Build Entity and the County, including a Force Majeure Event (see Paragraph 13.7 above including required mitigation efforts), (b) periods of delay caused jointly by Design-Build Entity and either the County or Regulatory Agency, or (c) periods of concurrent delay which include both delay for which Design-Build Entity is entitled to time extension and delay for which Design-Build Entity is not entitled to any time extension. In such cases, a time extension without compensation shall constitute Design-Build Entity's sole and exclusive remedy for such concurrent delays. Extensions of the Contract Time, when granted, will be based upon the effect of delays to the critical path of the Work as a whole.
- 15.7 Compensable Delay. Design-Build Entity may receive a time extension and an adjustment in the Contract Sum as compensation in conformance with Document 01 26 00 (Contract Modification Procedures) for delays to the critical path of the Work caused by Regulatory Agency, or delays caused by the County or by the County's contractors for which the County is responsible and which delay is unreasonable under the circumstances involved, and not within the contemplation of the parties, except that Design-Build Entity shall not be entitled to damages for delay to the Work caused by the following reasons:
- 15.7.1 The County's enforcement of any government act or regulation, or the provisions of the Contract Documents, Design-Build Entity's failure to perform its cooperation and coordination responsibilities required by the Contract Documents, and the County's right to sequence the Work in a manner which would avoid disruption to the occupants of the Project facility, County's tenants and their contractors or other prime contractors and their respective Subcontractors, exercised as a result of Design-Build Entity's failure to perform its cooperation and coordination responsibilities required by the Contract Documents.
- 15.7.2 Granting of extension of Contract Time for any reason shall in no way operate as a waiver on the part of the County, of its right to collect liquidated damages for other delays or of its right to collect other damages or other rights to which the County is entitled.
- 15.8 Liquidated Damages.
- 15.8.1 Execution of the Contract by Design-Build Entity shall constitute acknowledgement by Design-Build Entity that Design-Build Entity understands, has ascertained and agrees that the County will actually sustain damages in the amount fixed in the Contract for each and every Day during which Substantial Completion and Final Completion of the Work are delayed beyond the expiration of the time fixed for completion or extensions of time allowed pursuant to provisions of the Contract Documents. Design-Build Entity and the County agree that such specified measures of liquidated damages shall be presumed to be the damages actually sustained by the County as defined below, and that because

of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.

- 15.8.2 There shall be deducted from any money due or to become due to Design-Build Entity all sums representing liquidated damages. Should Design-Build Entity be inexcusably delayed in the performance of the Work, County may deduct liquidated damages based on its estimated period of late completion. County need not wait until Substantial Completion or Final Completion to withhold liquidated damages from Design-Build Entity.
- 15.8.3 Liquidated damages shall be considered not as a penalty but as agreed monetary damage for all actual damages sustained by the County for delay, including but not limited to loss of revenue and increased Project administration expenses, including extra inspection, construction management, and architectural and engineering expenses. Except as against delay claims by the Facility that are deemed to be included therein, liquidated damages shall not be deemed to include within their scope claims of third parties against the County.
- 15.8.4 Should money due or to become due to Design-Build Entity be insufficient to cover aggregate liquidated damages due, then Design-Build Entity forthwith shall pay the remainder of the assessed liquidated damages to County.
- 15.8.5 Design-Build Entity and County agree that time is of the essence for completion of the Project pursuant to these Contract Documents.

16. **WORKING CONDITIONS AND PREVAILING WAGES.**

16.1 Use of Site/Sanitary Rules.

- 16.1.1 All portions of the Work shall be maintained at all times in neat, clean, and sanitary condition.
- 16.1.2 Toilets shall be furnished by Design-Build Entity where needed, for use of Design-Build Entity and Subcontractor employees On-Site, and their use shall be strictly enforced. All toilets shall be properly secluded from public observation and shall be located, constructed, and maintained subject to approval of the County.
- 16.1.3 Design-Build Entity shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and other land or areas identified in and permitted by the Contract Documents and other land or areas permitted by applicable laws and regulations, rights of way, permits and easements, or as designated by the County, and shall not unreasonably encumber any of the foregoing premises with construction equipment or other materials or equipment. Design-Build Entity shall assume full responsibility for any damage to any such land, area, or any improvement located thereon, or to the owner or occupant thereof or of any adjacent areas, resulting from the performance of the Work.
- 16.1.4 During the progress of the Work, Design-Build Entity shall keep the Site and foregoing areas free from accumulations of waste materials, rubbish, and other debris resulting from the Work. At the completion of the Work, Design-Build Entity shall remove from and about the Site and other areas all waste materials, rubbish, and debris, as well as all tools, appliances, construction equipment,

machinery, and surplus materials. Design-Build Entity shall leave the Site clean and ready for occupancy by the County at Beneficial Occupancy and Substantial Completion of Work. Design-Build Entity shall restore to original and clean condition all structures or property not designated for alteration by Contract Documents.

16.1.5 Design-Build Entity shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Design-Build Entity subject any part of the Work structures or adjacent property to stresses or pressures that will endanger it. Design-Build Entity shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical, or any other system existing, shall perform the Work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment, or structures to accommodate performing the Work.

16.2 Protection of Work, Persons, and Property. Design-Build Entity shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with Work. Design-Build Entity shall comply with all safety requirements specified in any safety program established by County or required by state, federal, or local laws and ordinances. Design-Build Entity shall be responsible for all damage to Work, property or structures, all injuries to persons, and all damage and interruptions to the County's operations, arising from the performance of Work of the Contract Documents. Except as otherwise expressly approved by the County in writing, Design-Build Entity shall at all times perform all Work in a manner which does not interrupt, damage, or otherwise adversely impact any existing County facilities or operations.

16.2.1 Design-Build Entity shall comply with all Legal Requirements of AHJs for safety of persons or property or to protect them from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design-Build Entity shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

16.2.2 Design-Build Entity shall remedy all damage, injury, loss, or interruption to any property or operations referred to in this Paragraph 16.2 (Protection of Work, Persons and Property), caused, directly or indirectly, in whole or in part, by Design-Build Entity, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Design-Build Entity's duties and responsibility for safety and for protection of Work shall continue until Final Completion and Final Acceptance of the Work. The County and its agents do not assume any responsibility for enforcing any rights against any person or persons causing damage to Design-Build Entity's work.

16.2.3 Design-Build Entity shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

16.2.4 The County may, at its option, retain such monies due or to become due under the Contract Documents as the County deems necessary until any and all suits or claims against Design-Build Entity for injury to persons or property or

operations shall be settled, and the County receives satisfactory evidence to that effect.

16.3 Responsibility for Safety and Health.

16.3.1 Design-Build Entity shall ensure that Design-Build Entity, Subcontractors, Subconsultants, and their respective employees, agents, and invitees while at the Site comply with applicable health and safety laws including, without limitation, the federal Occupational Safety and Health Act of 1970 (and all rules and regulations issued pursuant thereto) and any of the County's safety regulations, as amended from time to time. Design-Build Entity shall further comply with any directions of the County regarding protective clothing, head covering, eye protection, etc. The County shall have no duty to issue such directions.

16.3.2 Safety of all persons employed by Design-Build Entity, Subcontractors, Subconsultants, and their respective agents and invitees on the Site shall be the full responsibility of Design-Build Entity. Design-Build Entity shall notify the County, in writing, of the existence of hazardous conditions, property, or equipment at the Site, which are not under Design-Build Entity's control. However, it shall be Design-Build Entity's responsibility to take necessary precautions against injury to persons or damage to property from recognized hazards until corrected by the responsible party.

16.3.3 Design-Build Entity is required to ensure Material Safety Data Sheets are available in a readily accessible place at the Site for any material requiring a Material Safety Data Sheet per the Federal "Hazard Communication" standard, or employees right to know law. Design-Build Entity is also required to ensure proper labeling on substance brought onto the Project Site and that any person working with the material or within the general area of the material is informed of the hazards of the substance and follows proper handling and protection procedures. Two additional copies of the Material Safety Data Sheets shall also be submitted directly to the County.

16.3.4 Design-Build Entity shall confine all persons under Design-Build Entity's employ or employ of its Subcontractors, Subconsultants, or any other person acting on behalf of Design-Build Entity, Subcontractors, or Subconsultants to that portion of the Site where the Work under the Contract Documents is to be performed, to routes to be designated by the County for ingress and egress thereto and to any other areas the County may expressly permit Design-Build Entity to use. Within such areas, except those routes for ingress and egress over which Design-Build Entity has no right of control, Design-Build Entity shall provide safe means of access to all places at which persons may at any time have occasion to be present.

16.3.5 Design-Build Entity shall submit a Safety Plan consisting of Illness and Injury Prevention Program ("IIPP"), Site-Specific Safety and Health Plan ("SSHP") that includes an Emergency Response Action Plan, and 24-Hour Contact List. Design-Build Entity shall include flowcharts "decision tree" data that may be posted strategically throughout the Project Site.

16.4 Emergencies. In emergencies affecting the safety or protection of persons, the Work, or property at the Site or adjacent thereto, Design-Build Entity, without special instruction or authorization from the County, is obligated to act to prevent threat and damage, injury, or

loss, until directed otherwise by the County. Design-Build Entity shall give the County prompt written notice if Design-Build Entity believes that any significant changes in the Work or variations from Contract Documents have been caused thereby. If the County determines that a change in the Contract Documents is required because of the action taken by Design-Build Entity in response to such an emergency, a Contract Modification, Change Order, or Field Change Directive will be issued to document the consequences of such action.

- 16.5 Use of Roadways and Walkways. Design-Build Entity shall not unnecessarily interfere with use of any roadway, walkway, or other facility for vehicular or pedestrian traffic, by any party entitled to use it. Wherever interference becomes necessary for proper and convenient performance of the Work, and no satisfactory detour route exists, Design-Build Entity shall, before beginning interference and with the County's prior concurrence, provide a satisfactory detour, temporary bridge, or other proper facility for traffic to pass around or over the interference and shall maintain it in satisfactory condition as long as the interference continues, all without additional compensation unless otherwise provided in the Contract Documents.

16.5.1 Design-Build Entity shall submit a Traffic Management Plan.

- 16.6 Nondiscrimination. No discrimination shall be made in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sexual preference, or gender of such persons, except as provided in Government Code § 12940, and every contractor for public works violating the provisions of Labor Code § 1735 is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the Labor Code.

- 16.7 Prevailing Wages.

16.7.1 The Project is subject to the provisions of Labor Code §§ 1720 et seq. and the requirements of Title 8 of the California Code of Regulations §§ 16000 et seq., which govern the payment of prevailing wage rates on public works projects. Pursuant to Labor Code §§ 1770 et seq., Design-Build Entity shall pay to persons performing labor in and about the Work provided for in the Contract an amount equal to or more than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall be equal to or more than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute the Contract. Design-Build Entity shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each Site.

16.7.2 Pursuant to Labor Code § 1775, Design-Build Entity shall forfeit, as a penalty to the County not more than Two Hundred Dollars (\$200.00) for each laborer, workman, or mechanic employed in performing labor in and about the Work provided in the Contract Documents for each Day, or portion thereof, on which such laborer, workman, or mechanic is paid less than the said stipulated rates for any Work done under these Contract Documents by him/her/they or by any Subcontractor or Subconsultant under him/her/they in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division 2 of the Labor Code. The sums and amounts which shall be forfeited pursuant to this Paragraph 16.7.2 and the terms of the

Labor Code shall be withheld and retained from payments due or to become due to Design-Build Entity under the Contract and the terms of the Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by the County, or immediately upon receipt of a Civil Wage and Penalty Assessment issued by the Labor Commissioner. The final amount of forfeiture shall be determined by the Labor Commissioner pursuant to Labor Code § 1775. Without in any way limiting the foregoing or any other provisions of the Agreement, the parties specifically stipulate that the relevant penalties and forfeitures provided in the Labor Code, especially in § 1775 and 1813 concerning prevailing wages and hours, as well as § 1776 concerning certified payroll records apply to the Contract and the California Code of Regulations, Title 8 of the California Code of Regulations § 16000 et seq.

- 16.7.3 Design-Build Entity shall insert in every subcontract, design agreement, or other arrangement which Design-Build Entity may make for performance of work or labor on the Work provided for in the Contract Documents, a provision that the Subcontractor or Subconsultant shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the Labor Code.
- 16.7.4 Design-Build Entity stipulates that it shall comply with all requirements of Project Stabilization Community Benefits Agreement (“PSCBA”) / Project Labor Agreement (“PLA”) of the County of Alameda, and shall pay to persons performing labor in and about the Work provided for in the Contract an amount equal to or more than the following:
 - 16.7.4.1 Wage rate and fringe benefit payments and classification for that person’s corresponding labor classification as required by the Department of Industrial Relations; and
 - 16.7.4.2 Wage rate and fringe benefit payments and classification for that person’s corresponding labor classification as required under the PSCBA / PLA of the County of Alameda and California Labor Code.
- 16.7.5 If there are conflicts between the Wage rate and fringe benefit payments and classification between the Department of Industrial Relations and the PSCBA / PLA of the County of Alameda, Design-Build Entity shall pay the higher wage rate and fringe benefits.
- 16.7.6 Design-Build Entity shall comply with all applicable federal, state, and local laws and regulations regarding wage and hour laws, including without limitation Labor Code § 1813.
- 16.7.7 Design-Build Entity shall and shall cause its Subcontractors to comply with the requirements of Labor Code § 1771.1 pertaining to the registration of contractors pursuant to Labor Code § 1725.5. Registration and all related requirements of those sections must be maintained throughout the term of the Contract.

- 16.8 Environmental Controls. Design-Build Entity shall comply with all rules, regulations, ordinances, and statutes that apply to any work performed under the Contract Documents including, without limitation, the storm water general permit, any toxic water and soil

pollution controls, and air pollution controls specified in Government Code § 11017. Design-Build Entity is responsible for ensuring that Design-Build Entity's employees, Subcontractors, and the public are protected from exposure to airborne hazards or contaminated water, soil, or other toxic materials used during or generated by activities On-Site or associated with the Project. Design-Build Entity shall implement conditions on the Project to ensure that any environmental impact is minimized in accordance with the Project CEQA compliance documents.

16.8.1 Hazardous Waste or Materials Disposal.

16.8.1.1 Design-Build Entity has the sole responsibility for determining current waste storage, handling, transportation, and disposal regulations for the Site and for each waste disposal facility. Except for generation fees and costs to be borne by the County, Design-Build Entity must otherwise comply fully and at its sole cost and expense with these regulations and any applicable law. County may, but is not obligated to, require submittals with this information for it to be reviewed consistent with the Contract Documents.

16.8.1.2 Design-Build Entity shall develop and implement a system acceptable to County to track hazardous waste from the Site to disposal, including appropriate "Hazardous Waste Manifests" on the relevant federal Environmental Protection Agency ("EPA") form, so that County may and is able to track the volume of Project waste delivered to and deposited in each landfill or disposal facility. Design-Build Entity shall deliver to County upon its request each original landfill or disposal facility certificate of receipt.

16.8.1.3 Design-Build Entity shall provide County with the name and address of each waste disposal facility prior to any disposal and County shall have the express right to reject any proposed disposal facility. Design-Build Entity shall not use any disposal facility to which County has objected. Design-Build Entity shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction forwarding the original to the County upon its request.

16.9 Shoring Safety Plan.

16.9.1 At least five (5) Days in advance of excavating any trench five (5) feet or more in depth, Design-Build Entity shall submit to the County a detailed plan showing the shoring, bracing, and sloping design and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by Labor Code § 6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.

16.9.2 During the course of the Work, Design-Build Entity shall submit shoring plans to Regulatory Agency as required. Design-Build Entity shall allow adequate time for Regulatory Agency review and approval of all plans.

16.9.3 During the course of the Work, Design-Build Entity shall be responsible for determining where sloping, shoring, and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing

for all excavation, including any excavation less than five (5) feet in depth. Design-Build Entity will be solely responsible for any damage or injuries that may result from excavating or trenching. The County's acceptance of any drawings showing the shoring or bracing design or work schedule shall not relieve Design-Build Entity of its responsibilities under this Paragraph 16.9 (Shoring Safety Plan).

END OF DOCUMENT

DOCUMENT 00 73 13

SPECIAL CONDITIONS

1. Authorities Having Jurisdiction (“AHJ”)

1.1 The Regulatory Authority and permitting authority for this Project is County of Alameda Public Works Agency. All Work designed and constructed for the **African American Wellness Hub Project** must be in accordance with all AHJ.

2. Mitigation Measures

Design-Build Entity shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act (“CEQA”) (Public Resources Code § 21000 *et seq.*).

2.1 Design-Build Entity shall become familiar with the full text of the Project’s CEQA requirements, if any, and take responsibility for implementation of Mitigation Monitoring and Reporting Program (if applicable).

2.2 The County plans to pursue a Class 2 CEQA categorical exemption for replacing or reconstructing a building as identified in Cal. Code Regs. tit. 14, § 15302. Replacement or Reconstruction. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to: Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity. The County will prepare the required CEQA documentation for approval by the Board of Supervisors prior to issuance of the Notice to Proceed for demolition or construction of the building, whichever comes first.

3. Sole Source Materials and Systems

3.1 The County has found and determined that the following item(s) shall be used on this Project based on the purpose(s) indicated (Public Contract Code § 3400(c)). Substitutions will not be considered by the County for the following items:

3.1.1 **Not Used.**

4. Manufacturer Recommended Maintenance of Systems

4.1 Design-Build Entity will provide or perform all manufacturer’s recommended maintenance throughout the duration of the correction guarantee period specified in Article 9 of

Document 00 72 53 (General Conditions) and Document 00 65 36 (Project Warranty and Correction Guarantee).

5. Regulatory Agency Review Durations

5.1 Regulatory Review Durations: Regulatory Agency review of each Construction Documents Bid Package may take up to eight (8) weeks from the date the Bid Package and applicable permit application is submitted to the Regulatory/Permitting Agency.

6. Work Restrictions

6.1 Hours of Work: The Standard work schedule is an eight (8) hour day which may be 7:00 a.m. to 4:30 p.m. or 6:00 a.m. to 2:30 p.m., Monday through Friday. If Design-Build Entity would prefer to work an alternative schedule, it must submit a formal request in writing and obtain prior written approval from County.

7. General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities

7.1 Design-Build Entity acknowledges that all California buildings are obligated to develop and implement the following requirements for the discharge of storm water to surface waters from its construction and land disturbance activities (storm water requirements), without limitation:

7.1.1 Municipal Separate Storm Sewer System ("MS4") is a system of conveyances used to collect and/or convey storm water, including, without limitation, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.

7.1.2 Storm Water Pollution Prevention Plan ("SWPPP") contains specific best management practices ("BMPs") and establishes numeric effluent limitations at:

7.1.2.1 Sites where the County engages in maintenance (e.g., fueling, cleaning, repairing) for transportation activities.

7.1.2.2 Construction sites where:

7.1.2.2.1 One (1) or more acres of soil will be disturbed, or

7.1.2.2.2 The project is part of a larger common plan of development that disturbs more than one (1) acre of soil.

7.2 Design-Build Entity shall comply with any County storm water requirements that are approved by the County and applicable to the Project, at no additional cost to the County.

7.3 At no additional cost to the County, Design-Build Entity shall provide a Qualified Storm Water Practitioner who shall be On-Site and implement and monitor any and all SWPPP requirements applicable to the Project, including but not limited to:

7.3.1 At least forty-eight (48) hours prior to a forecasted rain event, implementing the Rain Event Action Plan ("REAP") for any rain event requiring implementation of the REAP, including any erosion and sediment control measures needed to protect all exposed portions of the Site; and

7.3.2 Monitoring any Numeric Action Levels ("NALs"), if applicable.

8. Small Local Emerging Business (“SLEB”) Program Requirements
 - 8.1 Design-Build Entity must comply with the requirements and goals of the County’s Small Local Emerging Business Program. See Document 00 62 40 (SLEB Program).
9. First Source
 - 9.1 Design-Build Entity should take advantage of the County First Source Program.:
[First Source Program](#)
10. Project Stabilization/Community Benefit Agreement
 - 10.1 Design-Build Entity stipulates that it shall comply with all requirements of Document 00 73 49 (Project Stabilization/Community Benefits Agreement (“PSCBA”)) including but not limited to the First Amended and Restated PSCBA of the County of Alameda dated October 6, 2020, and shall pay to persons performing labor in and about the Work provided for in the Contract an amount equal to or more than the following:
 - 10.1.1 Wage rate and fringe benefit payments and classification for that person’s corresponding labor classification as required by the Department of Industrial Relations;
 - 10.1.2 Wage rate and fringe benefit payments and classification for that person’s corresponding labor classification as required under the PSCBA of the County of Alameda and California Labor Code.
 - 10.1.3 If there are conflicts between the wage rate and fringe benefit payments and classification between the Department of Industrial Relations and the PSCBA of the County of Alameda, Design-Build Entity shall pay the higher wage rate and fringe benefits.
11. County of Alameda Contract Compliance System
 - 11.1 Alameda County utilizes the Elation Systems contract compliance application as part of its commitment to assist contractors to comply with certain legal and contractual requirements. See Document 00 22 19 (Elation Application PSCBA). The Elation Systems, a secure web-based computer system, was implemented to monitor compliance and to track and report certified payroll and payment participation in County contracts.
 - 11.2 Design-Build Entity and all participating Subcontractors and Subconsultants of all tiers awarded contracts as a result of the Request for Qualifications and Proposals process for this Project are required to use the Elation Systems to submit payroll and payment information including, but not limited to, weekly certified payrolls, monthly progress payment reports, and other information related to Project progress. Use of the Elation Systems, including support and training, are available at no charge to Design-Build Entity and Subcontractors participating in County contracts.
 - 11.3 Upon Contract award:
 - 11.3.1 The County will provide Design-Build Entities, contractors, Subconsultants, and Subcontractors participating in any contract awarded as a result of the County’s selection process, a code that will allow them to register and use the Elation Systems free of charge.

11.3.2 Design-Build Entity should schedule a representative from its office/company, along with each of its contractors, Subconsultants, and Subcontractors, to attend Elation Systems training.

11.3.2.1 Free Elation Systems training session videos are available online within the Elation Systems application.

11.4 It is the Design-Build Entity's responsibility to ensure that it and its contractors, Subconsultants, and Subcontractors are registered and trained as required to utilize Elation Systems.

11.4.1 For systems support visit Elation Systems online at <http://www.elationsys.com/> or contact them at (925) 924-0340.

11.5 If Design-Build Entity has questions regarding the utilization of the Elation Systems, contact the County Project Manager.

12. Program and Construction Manager

The County will use a Construction Manager on this Project. Vanir is the Program and Construction Manager for this Project.

END OF DOCUMENT

DOCUMENT 00 73 16

INSURANCE REQUIREMENTS

1. At or before the date specified in Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers), Design-Build Entity shall furnish to County satisfactory proof that Design Builder has in full force and effect the following classes of insurance in the form and with limits and deductibles Specified below:
2. Insurance Policy Limits. All of Design-Build Entity's insurance shall be with insurance companies with an A.M. Best rating of no less than A: XI. The limits of insurance shall not be less than:

Commercial General Liability	Each Occurrence	\$3,000,000
	General Aggregate	\$6,000,000
	Product Liability and Completed Operations	\$1,000,000
Professional Liability	Each Occurrence/Claim	\$1,000,000
	General Aggregate	\$2,000,000
Automobile Liability – Any Auto	Combined Single Limit	\$2,000,000
Excess Liability		\$4,000,000
Workers Compensation		Statutory limits pursuant to state law
Employers' Liability		\$1,000,000
Builders Risk (Course of Construction)		Issued for the Initial GMP Contract Sum

3. Commercial General Liability and Automobile Liability Insurance.
 - 3.1. Design-Build Entity shall procure and maintain, during the duration of the Work of this Contract and for a minimum of ten (10) years after Final Completion of the Work, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Design-Build Entity, County, Construction Managers, and Architects from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under the Contract. Design-Build Entity shall ensure that Products Liability and Completed Operations coverage and Fire Damage Liability is included within the above policies and within the required limits Specified above, or Design-Build Entity shall procure and maintain these coverages separately.
 - 3.2. Subcontractor: Design-Build Entity shall require its Subcontractors, if any, to procure and maintain similar Commercial General Liability Insurance. Professional Liability Insurance, and Automobile Liability Insurance with minimum limits equal to the amount required of Design-Build Entity. Design-Build Entity shall verify Subcontractor's compliance.
4. Professional Liability Coverage. Without limiting Design-Build Entity's liability, Design-Build Entity shall obtain, pay for, and maintain in full force and effect at its sole expense, Professional Liability insurance covering negligent acts, errors, or omissions in the performance of professional services with policy limits of not less than one million (\$1,000,000.00) per claim and two million (\$2,000,000.00) in the aggregate. Such insurance must be written by insurance carriers acceptable to County, throughout the term of the Contract and for at least five (5) years after completion and County's acceptance of the

Project (whether through terms or endorsements providing for an extended reporting period (“ERP”) or through renewal or replacement coverage including a retroactive date for prior acts coverage from commencement of services under the Contract or earlier, with all such ERPs, renewals, and replacement coverage to be approved by County in its sole discretion). The professional liability insurance policy shall be written on a policy form designed to provide coverage for claims arising from negligent acts, errors, or omissions in the performance of professional services by Design-Builder, its Architect, their respective subconsultants, employees, and agents for “Covered Professional Services” as designated in the policy and must include coverage for services performed under the Contract. Any policy exclusions affecting services performed under the Contract that would eliminate coverage must be deleted as pertains to the Contract. The obligation to maintain this coverage shall survive termination of the Contract and final payment thereunder.

5. Excess Liability Insurance

5.1. Design-Build Entity shall procure and maintain, during the duration of the Work of this Contract and for a minimum of ten (10) years after Final Completion of the Work, Excess Liability Insurance that shall protect Design-Build Entity, County, Construction Managers, and Architects within the required policy limits Specified above and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers’ Liability Insurance.

5.2. Subcontractor: Design-Build Entity shall require its Subcontractors, if any, to procure and maintain similar Excess Liability Insurance with minimum limits equal to the amount required of Design-Build Entity. Design-Build Entity shall verify Subcontractor’s compliance.

6. Workers’ Compensation and Employers’ Liability Insurance

6.1. In accordance with provisions of § 3700 of the California Labor Code, Design-Build Entity and every Subcontractor shall be required to secure the payment of compensation to its employees.

6.2. Design-Build Entity shall procure and maintain, for the duration of the Work of this Contract, Workers’ Compensation Insurance and Employers’ Liability Insurance for all of its employees engaged in Work under the Contract, on or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors’ death benefits. Design-Build Entity shall require its Subcontractors to procure and maintain Workers’ Compensation Insurance and Employers’ Liability Insurance for all employees of Subcontractors. Any class of employee or employees not covered by a Subcontractor’s insurance shall be covered by Design-Build Entity’s insurance. If any class of employee or employees engaged in Work under the Contract, on or at the Site of the Project, is not protected under the Workers’ Compensation Statute, Design-Build Entity shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employees not otherwise protected before any of those employees commence work on the Project.

7. Builder's Risk Insurance: Builder's Risk "All-Risk" Insurance

7.1. Design-Build Entity shall procure and maintain, during the life of this Contract, Builder’s Risk Insurance (Course of Construction), or similar first party property coverage acceptable to the County, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, sonic disturbance, earthquake, flood, collapse, wind, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the Property, and reasonable costs for the Architect’s and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof. Design-Build Entity shall provide a separate line item price in the Proposal Form (Document 00 42 53) for the cost of the Design-Build Entity to obtain Builder’s Risk “All Risk” insurance to indemnify the County for all damage to the Work for the risks Specified above, **excluding earthquakes in excess of a magnitude of 3.5 on the Richter Scale in accordance**

with Public Contract Code §7105 (a), which evidence of satisfactory Builder's Risk insurance coverage shall be provided to the County prior to execution of the Contract and within the time specified in Document 00 21 16 (Request for Qualifications and Proposals – Instructions to Proposers).

8. Proof of Carriage of Insurance and Other Requirements: Endorsements and Certificates
 - 8.1. Design-Build Entity shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until Design-Build Entity and its Subcontractors have procured all required insurance and Design-Build Entity has delivered in duplicate to the County complete endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained, and the County has approved these documents.
 - 8.2. Endorsements, certificates, and insurance policies shall include the following:
 - 8.2.1. A clause stating:

“This policy shall not be amended, canceled, or modified and the coverage amounts shall not be reduced until notice has been mailed to County, Architect, and Construction Manager stating date of amendment, modification, cancellation or reduction. Date of amendment, modification, cancellation, or reduction may not be less than thirty (30) days after date of mailing notice.”
 - 8.3. Language stating, in particular, those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
 - 8.4. All endorsements, certificates, and insurance policies shall state that County, its Supervisors, employees, and agents, Construction Manager(s), and Architect(s) are named additional insureds under all policies except Workers' Compensation Insurance and Employers' Liability Insurance. Design-Build Entity's and Subcontractors' insurance policies shall be primary and non-contribution to any insurance or self-insurance maintained by County, its Supervisors, employees and/or agents, Construction Managers, and Architects. All endorsements shall waive any right to subrogation against any of the named additional insureds.
 - 8.5. All policies shall be written on an occurrence form.
9. Nothing in this Document 00 73 16 (Insurance Requirements) shall be construed as limiting in any way the extent to which Design-Build Entity or any Subcontractor may be held responsible for payment of damages resulting from their operations.
10. Design-Build Entity, any Subcontractor, and any Professional whose work involves the removal of asbestos, lead, or other toxic substance or removal or replacement of underground tanks shall obtain and maintain Pollution Legal Liability insurance including coverage for loss or damage arising out of professional liability, with a limit not less than five million dollars (\$5,000,000) per pollution incident and annual aggregate in a form and from an insuring entity acceptable to the County.

END OF DOCUMENT

DOCUMENT 00 73 49
PROJECT STABILIZATION/COMMUNITY BENEFIT AGREEMENT
ALAMEDA COUNTY BOARD OF SUPERVISORS
MINUTE ORDER

The following action was taken by the Alameda County Board of Supervisors on 10/06/2020

Approved as Recommended

Other

Unanimous Chan: Haggerty: Miley: Valle: Carson: - 5

Vote Key: N=No; A=Abstain; X=Excused

Documents accompanying this matter:

Contract: C-2020-146

Documents to be signed by Agency/Purchasing Agent:

File No. 30533

Item No. 16

Copies sent to:

Cindy Wong; (Rush item picked-up in person by Russel Peav); AUDITOR

Special Notes:



I certify that the foregoing is a correct copy of a Minute Order adopted by the Board of Supervisors, Alameda County, State of California.

ATTEST:
Clerk of the Board
Board of Supervisors

By: *Shirley Campbell-Beltis*
Deputy



September 21, 2020

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, California 94612-4305

Dear Board Members:

SUBJECT: AUTHORIZE THE PRESIDENT OF THE BOARD TO SIGN THE COUNTYWIDE FIRST AMENDED AND RESTATED PROJECT STABILIZATION/COMMUNITY BENEFITS AGREEMENT WITH THE BUILDING AND CONSTRUCTION TRADES COUNCIL OF ALAMEDA COUNTY, SUBJECT TO REVIEW AND APPROVAL AS TO FORM BY COUNTY COUNSEL

RECOMMENDATION:

Authorize the President of the Board to sign the First Amended and Restated Project Stabilization/Community Benefits Agreement between Alameda County and the Building and Construction Trades Council of Alameda County (Principal: Andreas Culver; Location: Oakland), which serves as a countywide Project Labor Agreement for construction contracts for the term of 9/22/2020 to 9/22/2025 with a renewal option to extend the Agreement through 9/22/2030.

DISCUSSION/SUMMARY:

On June 11, 2013, your Board approved (Item #13, File #28921) a countywide Project Stabilization/Community Benefits Agreement (PS/CBA) that served as the original Countywide Project Labor Agreement (PLA). The Agreement's focus is on individuals and operates in conjunction with the existing Countywide Small Local Emerging Business (SLEB) program, General Services Agency's (GSA) Enhanced Community Outreach Program (ECOP), and Public Works Agency's (PWA) Construction Compliance Program (CCP), all of which focus on business enterprises.

On July 9, 2019, your Board approved (Item #27, File #30325) a new one-year PS/CBA to allow Alameda County and the Building and Construction Trades Council of Alameda County to continue enforcement of the Agreement that was approved in 2013 to allow time for the parties to review terms, assess outcomes, and negotiate any desired changes for a new five-year agreement that will serve the best interest of the County and its residents.

On June 9, 2020, your Board approved (Item #11, File #30497) countywide Project Stabilization/Community Benefits Agreement Amendment 1, between Alameda County and the Building and Construction Trades Council of Alameda County, extending the original one-year term of July 9, 2019 to July 8, 2020 by an additional three months until October 8, 2020 while negotiations on the new Agreement were finalized.

The proposed new PS/CBA is a pre-bid agreement (as are all PLAs) negotiated between the Building Trades Council of Alameda County (BTCA) and Alameda County. The new PS/CBA would cover all County projects over \$1,000,000, except for those by PWA, where it applies to those projects over \$3,000,000. Like all PLAs, the PS/CBA reduces or eliminates project delays as a result of labor disputes (e.g., strikes, by expressly forbidding strikes, lockouts, etc.).

Since 2013, the PS/CBA has shielded Alameda County from these types of labor disputes while simultaneously ensuring that hundreds of County residents not only worked on County projects but also received excellent pay, pension, and healthcare. The current PS/CBA requires that County residents work on County construction projects that meet the threshold, *up to* 40% of all work hours. The new PS/CBA requires a *minimum of* 40% of hours worked by county residents.

The current PS/CBA is remarkably effective at achieving its original goals. First and foremost, County projects were allowed to proceed with no labor disruptions. Secondly, Alameda County residents worked over 445,000 hours, which represents over 41% of all hours worked on County PS/CBA construction projects. Because the proposed PS/CBA sets a minimum number of hours worked by County residents, it will likely be more effective at creating opportunities for County residents.

Alameda County, like the rest of the nation, has seen an unprecedented impact on employment caused by the COVID-19 pandemic. According to the State of California Employment Development Department, as of July 2020, over 160,000 Alameda County residents were unemployed, which is an unemployment rate of 12% (in February 2020, it was ~3%). The speed of job losses is unprecedented in the County's history.

As noted above, your Board authorized staff to enter into negotiations with the BTCA for a new PS/CBA. While it is unlikely that the County's construction projects can provide resolution to such a severe unemployment problem, staff believes that the new PS/CBA will create many opportunities for the numerous Alameda County communities most affected by the pandemic.

Through the partnership created by the existing PS/CBA, the BTCA, County Contractors and staff has helped twenty-four Disadvantaged Residents receive apprenticeship sponsorship (guaranteed employment by a contractor) into the unions, and these new apprentices worked over 8,000 hours on County projects.

Members of the unions of the BTCA have access to employer-provided healthcare. This union-negotiated benefit passes to workers on PS/CBA covered projects; this will help to address the worst impacts of the COVID-19 pandemic by guaranteeing that workers have access to healthcare, safer working conditions, pensions, and excellent wages. The PS/CBA, through synergies with BTCA, helps to ensure that Disadvantaged Residents have access to the highest quality construction training through an updated "New Apprentice" program.

In addition to ensuring the workers on County projects have health insurance, the PS/CBA prevents the long-standing wage discrepancy between men and women – approximately \$16,000 in California - through collectively bargained wages and benefits for all workers on covered projects. Providing access to unionized construction for women is particularly impactful on eliminating poverty because women between the ages of 18 – 34 represent the largest demographic group living in poverty. They are also most likely to be single heads of households, meaning their young children are also living in poverty.

The latest research examining public works construction in Alameda County from the San Francisco Foundation indicates that female and black apprentices have lower graduation rates from apprenticeship programs. The new PS/CBA attempts to address retention by expressly requiring that 40% of apprentice hours be for first and second-year Disadvantaged Resident apprentices, and the County will work with BTCA, CBOs, and other public agencies in the county to maintain a list of Disadvantaged Resident apprentices for referral to covered projects.

The new PS/CBA also creates opportunities for County residents by:

- Allowing Alameda County, BTCA, and community to assess program efficacy and adjust the program;
- Having clear good-faith-efforts steps for contractors to follow;
- Giving contractors access to the unions' hiring hall name call and or rehire procedures to hire County residents; and
- Creating clear pathways to employment for Disadvantaged Residents on County projects through apprenticeship upon completion of pre-apprenticeship.

For the PWA, the current PS/CBA covers all trucking on construction projects. The new PS/CBA expands coverage of these opportunities to all trades on projects with a contract value exceeding \$3,000,000 while concurrently ensuring little to no impact on PWA's equity contracting programs. To protect the ongoing efficacy of PWA's equity programs, the PS/CBA requires an impact analysis before expanding coverage to include projects with a contract value of \$1,000,000 or more.

The new PS/CBA provides a variety of protection/exemptions for Sole Proprietor construction contractors and Owner Operators. These new guidelines ensure the Agreement is consistent with state law, i.e., AB 5 (2019), and still create space for micro-businesses to perform on County projects.

To allow Alameda County to contract quickly for unique situations, the new PS/CBA exempts the following work:

- Emergency projects;
- Job Order Contracts with a task value less than \$1,000,000.00;
- Off-site factory-built modular construction; and
- Improvements on leased property not executed by the County.

FINANCING:

Approval of the new PS/CBA will result in no net County cost.

VISION 2026 GOAL:

The adoption of this policy meets the 10X goal pathway of Employment for All in support of our shared vision of a Prosperous and Vibrant Economy.

Respectfully submitted,

DocuSigned by:

Willie Hopkins

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Willie A. Hopkins, Jr.

Director, General Services Agency

WAHJA\p\I:\Board Letters\Purchasing\Board Letter - New PSCBA_20200914.docx

cc: County Administrator
Auditor-Controller
County Counsel

**FIRST AMENDED AND RESTATED
PROJECT STABILIZATION/COMMUNITY BENEFITS AGREEMENT**

for the

COUNTY OF ALAMEDA

2020-146

Table of Contents

PREAMBLE 1

DEFINITIONS 2

PURPOSE 5

SCOPE OF AGREEMENT 5

RELATIONSHIP BETWEEN PARTIES 10

SUBCONTRACTS 10

WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES 12

PRE-JOB CONFERENCE 12

JOINT ADMINISTRATIVE COMMITTEE MEETINGS 13

COORDINATOR 14

UNION RECOGNITION AND REPRESENTATION 15

NO STRIKES - NO LOCKOUTS 15

MANAGEMENT RIGHTS 19

WORK RULES 20

WAGE SCALES and FRINGE BENEFITS 20

HOURS OF WORK, OVERTIME, SHIFTS and HOLIDAYS 20

HEALTH AND SAFETY 21

REFERRAL PROCESS 21

LOCAL HIRING PROGRAM 23

REPORTING 26

HELMETS TO HARDHATS: VETERAN EMPLOYMENT 27

NON-DISCRIMINATION 27

GRIEVANCE PROCEDURE 27

MISCELLANEOUS PROVISIONS 30

ENTIRE AGREEMENT 30

GENERAL SAVINGS CLAUSE 31

DURATION OF AGREEMENT 31

PREAMBLE

This Agreement is made and entered into on this 16th day of October 2020, by and between the County of Alameda; the Building and Construction Trades Council of Alameda County, AFL-CIO; and the local Unions signatory hereto, on their own behalf and on behalf of the various local Unions involved, for the construction of all Covered Projects. All Contractors and/or subcontractors shall become bound to this Agreement by signing the "Contractor Agreement To Be Bound" (Exhibit B).

RECITALS

WHEREAS, the Covered Projects described in this Agreement have been identified by the County as those in which a Project Stabilization/Community Benefits Agreement would benefit the County; and

WHEREAS, the Contractors will be engaged in construction of the project; and

WHEREAS, a skilled labor pool represented by the Unions will be required to complete the work involved; and

WHEREAS, the Unions agree to cooperate in every way possible with employees of the Contractors; and

WHEREAS, the parties to this Agreement mutually agree that safety, quality, productivity and labor harmony are primary goals; and

WHEREAS, the County desires to provide, enhance and encourage construction training and employment opportunities for Alameda County residents and small business enterprises within the County through apprentice and pre-apprentice programs; and

WHEREAS, the County also desires to use this Agreement as a vehicle for building the capacity of Alameda County residents and businesses and to maximize their potential to successfully participate in other large scale projects; and

WHEREAS, the parties recognize the need for safe, efficient and speedy construction in order to reduce unnecessary delays and result in timely completion of the project; and

WHEREAS, the parties desire to mutually establish and stabilize wages, hours and working conditions for the employees employed on the project by the Contractors, and further to encourage close cooperation to achieve a satisfactory, continuous and harmonious relationship between the parties to this Agreement; and

WHEREAS, the County of Alameda's mission is to enrich the lives of all residents through visionary policies and accessible, responsible and effective services and historically the County

has supported contracting outreach programs that recognize the economic and workforce development potential of capital construction projects on government owned facilities; and

WHEREAS, the Parties recognize that disadvantaged individuals, families, and communities within the county experience high unemployment and are also often recipients of County services, and that these disadvantaged populations may economically benefit through participation in local hire, apprenticeship and pre-apprenticeship programs; and

WHEREAS, the Union(s), the Council, Contractors, subcontractors, and the County wish to ensure labor peace at the Covered Project sites, without any disruption that could jeopardize the schedule and timeliness of the construction process, where both Contractors that are signatory to collective bargaining agreements of the Union(s) are supervising employees that are members of the Union(s) and where Contractors that are not signatory to collective bargaining agreements are supervising employees;

WHEREAS, a Project Stabilization/Community Benefits Agreement has been in place and successfully implemented since 2013, and the Parties wish to extend that Agreement, as amended and fully restated herein;

NOW THEREFORE, the parties, in consideration of the mutual promises and covenants herein contained, mutually agree as follows:

ARTICLE 1

DEFINITIONS

1.1 For purposes of this Agreement, the following terms will have the following meanings. All meanings include both the singular and plural form.

“Acceptance” shall mean action by the County notifying Contractor and other entities of Completion, as required by and in accordance with contract terms and relevant applicable statutes.

“Agreement” shall mean this Project Stabilization/Community Benefits Agreement.

“Alternative Employee” shall mean an employee whose services have been obtained from a source other than the Union referral facilities as permitted in Section 17.6 of this Agreement.

“Apprentice” shall mean a person enrolled in a state-approved apprenticeship training program administered by a Joint Labor-Management Apprenticeship Training Committee (JATC).

“Completion” means that the work of Contractors is completed, as follows:

1. The occupation, beneficial use, and enjoyment of a work of improvement by the public agency, or its agent, accompanied by a cessation of labor on the work of improvement;

and

2. The acceptance by the public agency, or its agent, of the work of improvement;
3. Except that if the County directs a Contractor to engage in repairs, warranty work, modifications, or punch list work or if a Contractor performs work under a change order, such work shall be Covered Work under this Agreement.

“Contractor” means all contractors and subcontractors at all tiers, and any individual, firm, partnership or corporation (including the prime contractor, subcontractor of any tier, general contractor, design-build entity, or equivalent entity), or combination thereof, including joint ventures, and their successors and assigns, that is an independent business enterprise and that has entered into a contract for performance of Covered Work with the County or any of its contractors or subcontractors at any tier, with respect to the construction work covered by this Agreement and necessary for the Covered Project or any part thereof, including construction building material delivery as set forth in Section 3.11.

“Coordinator” shall mean the company or individual designated or retained by the County to administer this Agreement.

“Core Employee” shall mean an individual meeting the criteria listed in Section 17.1.1-17.1.5.

“Council” shall mean the Building and Construction Trades Council of Alameda County.

“County” shall mean the County of Alameda acting by and through its Board of Supervisors, Agency and Department heads, and administrative staff.

“Covered Project” shall mean a construction project covered by this Agreement as set forth in Section 3.2.

“Covered Work” means tasks in furtherance of construction of a Covered Project, including the tasks and activities specified for inclusion in Article 3, and excluding tasks and activities specified for exclusion in Article 3.

“Disadvantaged Resident” shall mean a resident of Alameda County who is unemployed at the time of commencement of work on the Covered Project, and is being sponsored into or has been enrolled in a state-approved apprenticeship training program administered by a Joint Apprenticeship Training Committee for less than two years.

“Emergency Work” shall mean those projects undertaken when an immediate or imminent critical impact to a facility or to the ability to provide essential services is likely within 30 days should no further action be taken, or in circumstances where mandatory environmental, health and/or safety requirements will be violated without said project, provided in either case that the project is being awarded pursuant to Public Contract Code section 22050.

“General Prevailing Wage Determination” shall mean the decisions made by the Director of the California Department of Industrial Relations (DIR) establishing a journeyman craft or

classification's prevailing wage determination, holiday, advisory scope of work, or travel and subsistence provision.

“Job Order Contract” shall mean an individual annual contract for repair, remodeling or other repetitive work done according to unit prices as authorized by Public Contract Code section 20128.5.

“Local Hiring Program” shall mean the program set forth in Article 18 of this Agreement intended to achieve the inclusion of Residents and Disadvantaged Residents in the employment and apprenticeship opportunities on Covered Projects.

“Master Labor Agreement” or “MLA” shall mean the collective bargaining agreement of each craft Union that is signatory to this Agreement.

“Owner Operator” shall mean a sole individual that owns and drives/operates a maximum of one unit, who is employed by a Contractor in the movement or transportation of materials or goods of another, and who does not employ any other individual to operate the unit in performance of Covered Work. The Owner Operator shall be carried on the payroll of the entity that employs or otherwise uses the Owner Operator. For the avoidance of doubt, a broker of trucks shall be considered a Contractor under this Agreement and be registered as a public works contractor per California Labor Code section 1725.5.

“Party” shall mean the County, the Council, and the Unions.

“Post-Disaster Work” shall mean County-approved construction projects consistent with Post-Disaster response and recovery efforts where the public interest and necessity demand immediate expenditure of public funds to safeguard life, health, or property following a local, state or federally declared disaster per the Stafford Act, provided in that the project is being awarded pursuant to Public Contract Code section 22050.

“Project Manager” shall mean the person or persons designated by the County to manage a Covered Project.

“Resident” shall mean an individual domiciled in Alameda County on the earlier of the date of employment on a Covered Project or the date of dispatch/referral by a Union to a Contractor performing work on a Covered Project. “Domiciled” has the meaning set forth in section 349(b) of the California Election Code.

“Sole Proprietor” shall mean a licensed contractor who is exempt from the requirement to carry workers’ compensation insurance and who will self-perform Covered Work without hiring employees or field staff for the Covered Project. For the avoidance of doubt, Sole Proprietors must execute the Contractor Agreement to be Bound attached hereto as Exhibit B.

“Trust Agreements” shall mean the agreements between Unions and employers and or employer associations to govern trust funds contributed on behalf of covered workers for benefits for said workers.

“Union” shall mean the Building and Construction Trades Council of Alameda County and the local Unions that have executed this agreement, acting on its own behalf and on behalf of its respective affiliates and member organizations, whose names are subscribed hereto and who have through their officers executed this Agreement.

ARTICLE 2

PURPOSE

- 2.1 The purposes of this Agreement are to promote efficient construction operations on the Covered Projects, to ensure an adequate supply of skilled craftspeople, to provide for peaceful, efficient and binding procedures for settling labor disputes, and to provide quality employment and training opportunities for Residents and Disadvantaged Residents to work on future County projects. In so doing, the parties to this Agreement establish the foundation to promote the public interest; to provide a safe work place; to assure high quality construction; to ensure uninterrupted construction of Covered Projects; to secure optimum productivity; to develop a pool of skilled labor for County projects; and to facilitate on-schedule performance and County satisfaction.
- 2.2 It is the intent of the Parties to set out uniform and fair working conditions for the efficient completion of the Covered Projects, maintain harmonious labor/management relations and eliminate strikes, lockouts and other delays.
- 2.3 The Parties agree that one of the primary purposes of this Agreement is to avoid the tensions that might arise on the Covered Projects if union and nonunion workers of different employers were to work side by side on the Covered Projects, thereby leading to labor disputes that could delay completion of the Covered Projects.
- 2.4 This Agreement is entered into pursuant to and consistent with California Public Contract Code (“PCC”) sections 2500 through 2502. Section 2500(a)(3) requires a public entity project stabilization agreement to include an agreed-upon protocol concerning drug testing for workers employed on the Covered Projects as set forth in Section 16.3.

ARTICLE 3

SCOPE OF AGREEMENT

- 3.1 Upon becoming effective, this Agreement shall amend and fully supersede the Project Stabilization/Community Benefits Agreement for the County of Alameda dated July 9, 2019, and will be applied to all Covered Projects awarded on or after the effective date.
- 3.2 This Agreement covers:

- 3.2.1 Construction contracts awarded by the County, including projects executed by the County for Special Districts, having an actual bid amount of \$1 million or more; with regard to construction contracts procured by the Alameda County Public Works Agency, the Parties mutually agree to the side letter set forth as Exhibit A, with Council signature on behalf of all Union parties; and
- 3.2.2 Construction contracts for projects not fitting into the above categories, and for which the Board of Supervisors at its discretion designates for application of this Agreement.
- 3.3 The County shall not divide construction contracts to intentionally evade the monetary thresholds of Section 3.2.1.
- 3.4 Where the County is providing at least fifty percent (50%) of the funding for a project having an actual bid amount of \$1 million or more, and is not awarding any construction contract(s) for the project and/or is not the lead agency for the project, the County shall make a request, in writing, to the entity awarding the project or the lead agency for the project, or both if both exist, to apply this Agreement, or in the alternative, shall make a request that the entity awarding the project or the lead agency for the project, or both if both exist, meet with the County and the Council to discuss application of this Agreement.
- 3.5 For the purpose of application of the thresholds set forth in Section 3.2.1 to Job Order Contracts, the threshold shall be applied to each Job Order, rather than to the Job Order Contract aggregate maximum. Individual Job Orders above the threshold shall require application of this Agreement to such individual Job Orders.
- 3.6 Covered Work: This Agreement covers, without limitation, all site preparation, surveying, construction, alteration, demolition, installation, improvement, remediation, retrofit, painting or repair of buildings, structures and other works, and related activities for the Covered Project that is within the craft jurisdiction of one of the Unions and that is directly or indirectly part of the Covered Project, including, without limitation to the following examples, landscaping and temporary fencing, temporary HVAC, geotechnical and exploratory drilling, soils and materials testing and inspection, pipelines (including those in linear corridors built to serve the Covered Project), pumps, pump stations, start-up, modular furniture installation, and final clean-up. This Agreement covers work done for the Covered Project in temporary yards, dedicated sites, or areas adjacent to the Covered Project, and at any on-site or off-site batch plant constructed to supply materials to the Covered Project.
- 3.7 This Agreement shall apply only to construction/craft employees, performing work on projects represented by the Unions, and shall not apply to Contractors' supervisors, technical or non-manual employees including, but not limited to, executives, engineers, office and clerical employees, drafters, architects, supervisors, timekeepers, messengers, guards, other employees above the classification of general foreman, inspectors, material

testers, and/or x-ray technicians, except to the extent that such inspectors, material testers, and/or x-ray technicians are covered by the relevant MLA.

- 3.8 There shall be no limitation or restriction upon the choice of materials or upon the full use and installation of equipment, machinery, package units, factory pre-cast, prefabricated or preassembled materials, tools or other labor-saving devices. The lawful fabrication provisions of the appropriate national or local agreements shall be applicable. The Covered Projects include work necessary for the Covered Projects and/or in temporary yards or areas adjacent to and dedicated to the Covered Projects, and at any batch plant(s) constructed or used solely to supply materials to the Covered Projects, when those sites or processes are dedicated exclusively to the Covered Projects.
- 3.9 This Agreement covers all on-site fabrication work over which the County or Contractors possess the right of control (including work done for Covered Projects in any temporary yard or area established for a Covered Project). Additionally, any offsite work, including fabrication, necessary for Covered Projects defined herein, that is lawfully covered by a current MLA or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution of this Agreement shall be considered covered work under this Agreement. This agreement shall not apply to factory built modular construction.
- 3.10 The furnishing of supplies, equipment or materials which are stockpiled for later use shall in no case be considered subcontracting and shall be covered to the extent permitted by law. The delivery of ready-mix, asphalt, aggregate, sand or other fill material which are directly incorporated into the construction process as well as the off-hauling of debris and excess fill material and/or mud, shall be covered by the terms and conditions of this Agreement. All entities providing work covered under this Section shall provide certified payroll records to the County within ten (10) days of written request or as required by the bid specifications.
- 3.11 This Agreement shall apply to any start-up, calibration, performance testing, repair, maintenance, operational revisions to systems and/or subsystems performed pursuant to a contract for Covered Work on a Covered Project. The County reserves the right to perform any start-up, operation, repair, maintenance or revision of equipment or systems with employees of the County. If required, Contractor's personnel may make a final check and may direct their staff on site to make any necessary repairs to protect the terms of a manufacturer's guarantee or warranty of a piece of equipment.
- 3.12 The on-site installation or application of all items shall be performed by the craft having jurisdiction over such work as set forth under the provisions of this Agreement; provided, however, it is recognized that installation of specialty items which may be furnished by the County or a Contractor shall be performed by construction persons of the vendor or other companies where expressly required to protect a warranty on the items, provided, however, that (i) the warranty is uniform and standard across purchasers/customers, and (ii) the warranty requirements are provided in writing. Any such work shall be identified and discussed at the relevant pre-construction conference, or as soon as the County or the

Contractor is aware of the need to invoke this provision. Upon request from the Council, the County shall discuss with the vendor whether installation or application may be performed pursuant to terms of this Agreement without affecting the status of the warranty. The issue of whether it is necessary to use construction persons of the vendor or other companies to protect the warranty shall be subject to the grievance and arbitration clause of this Agreement.

- 3.13 Neither the Coordinator designated in Article 9 below, nor the Contractors, have the authority to speak for or bind the County.
- 3.14 The County retains the right and ability to meet all competitive bidding requirements of public contracting law and to award contracts pursuant to law and established contracting procedures, regardless of awardee's union signatory status. Further, the County may, at its sole discretion, end, delay, and/or suspend any or all portions of the work and may combine, consolidate, modify and/or not build any one or more portions of work covered by this Agreement at any time.
- 3.15 The County shall retain the right at all times to perform and/or subcontract all portions of the construction and related work on projects not covered by this Agreement.
- 3.16 The County shall have the right to purchase material and equipment from any source and the craftspersons will handle and install such material and equipment, subject to the requirements of the other Covered Work sections of this Agreement.
- 3.17 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the National Transient Lodge (NTL) Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, with the exception that Articles 6, 11, and 23 of this Agreement shall apply to such work.
- 3.18 Without limiting the foregoing, items specifically excluded from the scope of this Agreement include the following:
 - 3.19.1 The operation of equipment and machinery owned or controlled by the County and its subcontractors and not directly related to construction of Covered Projects;
 - 3.19.2 All employees of any Contractor or any other consultant of the County not performing Covered Work;
 - 3.19.3 Any work performed on or near or leading to or on to the site of work covered by this Agreement and undertaken by state, county, city or other governmental bodies, or their contractors, or by public utilities or their contractors, and/or by

the County or its contractors, in each case for work that is not Covered Work. For the avoidance of doubt, work performed by public or private utilities, including all electrical utility, voice-data-video, and security installation work ahead of and up to the electrical service entry connection or the main point of entry into the building shall be excluded. All electrical utility, voice-data-video, and security installation work performed after the electrical utility service entrance or the main point of entry shall be Covered Work. Additionally, all contracted work performed ahead of the service entrance connection and main point of entry that is inside the property line that provides for access to the building via a conduit or series of conduits shall be Covered Work;

- 3.19.4 Off-site maintenance of leased equipment and on-site supervision of such work;
- 3.19.5 Non-construction support services contracted by the County or any Contractor in connection with Covered Projects;
- 3.19.6 All work by employees of the County;
- 3.19.7 All warranty functions, warranty work, corrective work, repair and maintenance work on purchased equipment performed by manufacturers' representatives or vendors after Acceptance of any Covered Projects by the County pursuant to a contract for Covered Work on a Covered Project; and
- 3.19.8 All Post-Disaster and Emergency Work.
- 3.19.9 Work privately contracted by owners of property that the County is leasing.
- 3.20 The Council shall assist the County and its Contractors in encouraging and soliciting subcontractors in bidding on all Covered Projects.
- 3.21 This Agreement shall be included in all invitations to bid or solicitations for proposals from contractors or subcontractors for work on Covered Projects.
- 3.22 The provisions of this Agreement, including the MLAs incorporated herein by reference, shall apply to Covered Work, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. To the extent a provision of this Agreement conflicts with an MLA, the provision of this Agreement shall prevail. Where a provision of an MLA does not conflict with this Agreement, the provision of the MLA shall apply. A list of all current MLAs in effect as of the effective date of this Agreement is attached hereto as Exhibit D; however, this list shall not be interpreted or construed to limit the applicability of future MLAs to Covered Work. The Council will provide any MLAs upon request from the County.

ARTICLE 4

RELATIONSHIP BETWEEN PARTIES

- 4.1 This Agreement shall only be binding on the signatory parties hereto, and shall not apply to parents, affiliates, subsidiaries, or other divisions of Contractors unless signed by such parent, affiliate, subsidiary, or other division of such company.
- 4.2 Each Contractor shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement, except as otherwise provided by law or the applicable Master Agreement. Any alleged breach of this Agreement by a Contractor or any dispute between the Union and the Contractor respecting compliance with the terms of this Agreement, shall not affect the rights, liabilities, obligations and duties between the signatory Union and each other Contractor party to this Agreement.
- 4.3 It is mutually agreed by the parties that any liability by a Union(s) to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a Union shall not affect the rights, liabilities, obligations and duties between the Contractors and the other Unions party to this Agreement.

ARTICLE 5

SUBCONTRACTS

- 5.1 In order to perform Covered Work on a Covered Project, whether as a Contractor or subcontractor, all Contractors agree to be bound by each and every provision of this Agreement and agree to evidence their acceptance prior to the commencement of work by executing the Agreement to be Bound in the form attached hereto as Exhibit B.
- 5.2 Each Contractor, which includes all subcontractors of any tier, including trucking entities performing Covered Work for Covered Projects, agrees that neither it nor any of its subcontractors will subcontract any work to be done for a Covered Project except to a person, firm, or corporation who is or becomes party to this Agreement by signing the Agreement to be Bound attached to this Agreement as Exhibit B. All Contractors performing Covered Work for a Covered Project shall, as a condition to performing work, execute the Agreement to be Bound and perform all work under the terms of this Agreement. The obligations of a Contractor may not be evaded by subcontracting. If the subcontractor refuses to execute the Agreement to be Bound, then such subcontractor shall not perform Covered Work on a Covered Project.
- 5.3 Notwithstanding any other provisions of this Agreement, the Contractor, as appropriate, shall have the absolute right to award contracts or subcontracts for a Covered Project notwithstanding the existence or nonexistence of any collective bargaining agreements between the prospective Contractor and any Union party, and provided that such Contractor is willing, ready and able to comply with this Project Stabilization/Community Benefits Agreement and shall execute the Agreement to be

Bound (in the form attached as Exhibit B), should such Contractor be awarded work covered by this Agreement.

5.4 Each Contractor with a contract directly with the County has the primary obligation for performance of all conditions of this Agreement, including the performance of all of that Contractor's subcontractors. This obligation cannot be relieved, evaded or diminished by subcontracting. Should a Contractor elect to subcontract, that Contractor shall continue to have such primary obligation.

5.5 Each Contractor, which includes all subcontractors of any tier performing work on the Covered Project, shall give written notice to the relevant Union(s) of any subcontract involving the performance of work covered by this Agreement within either five (5) business days of entering such subcontract or before the subcontractor commences work on the Covered Project, whichever occurs first. Such notice shall specify the name and address of the subcontractor, the Contractors State License Board license number of the subcontractor (if required) and the scope of work to be performed. Written notice at a Pre-Job Conference shall be deemed written notice under this provision only for those subcontractors listed at the Pre-Job Conference.

5.6 Signatory Contractors:

5.6.1 With regard to any Contractor that is independently signed to any Master Labor Agreement, this Agreement shall in no way supersede or prevent the enforcement of any subcontracting clause contained in such MLA, except as specifically set forth in Section 5.6.2 below. Any such subcontracting clause in an MLA shall remain and be fully enforceable between each craft union and its signatory Contractors, and no provision of this Agreement shall be interpreted and/or applied in any manner that would give this Agreement precedence over subcontracting obligations and restrictions that exist between craft unions and their respective signatory Contractors under an MLA, except as specifically set forth in Section 5.6.2 below.

5.6.2 If a craft union ("aggrieved union") believes that an assignment of work for a Covered Project has been made improperly by a Contractor or subcontractor, even if that assignment was as a result of another craft union's successful enforcement of the subcontracting clause in its MLA, as permitted by Section 5.6.1 above, the aggrieved union may submit a claim under the jurisdictional resolution procedure contained in Article 6 of this Agreement, and the decision rendered as part of that process shall be enforceable to require the Contractor or subcontractor that made the work assignment to assign that work prospectively to the aggrieved union. An award made to a craft union under the subcontracting clause of its MLA, as permitted pursuant to Section 5.6.1 above, shall be valid and fully enforceable by that craft union unless it conflicts with a jurisdictional award made pursuant to this Agreement. If the award made under the MLA conflicts with the jurisdictional award, the award of damages under the former shall be null and void *ab initio*.

ARTICLE 6

WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

- 6.1 The assignment of Covered Work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.
- 6.2 All jurisdictional disputes on a Covered Project between or among the building and construction trades Unions and the Contractors parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.
- 6.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an arbitrator shall be chosen by the procedures specified in Article V, Section 5 of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch and Thomas Pagan, and the arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California within fourteen (14) calendar days of the selection of the arbitrator. All other procedures shall be as specified in the Plan.
- 6.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge.
- 6.5 Each Contractor will conduct a pre-job conference with the Council prior to commencing work. The County and the project manager will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Contractors may be held together.

ARTICLE 7

PRE-JOB CONFERENCE

- 7.1 The Coordinator shall convene and the Council shall conduct, at a location and time mutually agreeable to the Council and the Coordinator, or by teleconference or videoconference if agreeable to the Council and Coordinator, a pre-job conference with the Unions and the representatives of all involved Contractors, who shall be prepared to announce craft assignments and discuss in detail the scope of work and the other issues set

forth below, at least fourteen (14) calendar days prior to:

- (a) The commencement of any Covered Project work, and
 - (b) The commencement of Covered Project work on any subsequently awarded construction contract.
- 7.2 The pre-job conference shall be attended by a representative of each participating Contractor and each affected Union, and the Council and County may attend at their discretion.
- 7.3 Seven (7) days before the pre-job conference each Contractor shall provide to the Coordinator and Council the following information, for discussion at the pre-job conference:
- (a) A listing and brief description of each Contractor's scope of work;
 - (b) The craft assignments;
 - (c) The estimated number of craft workers required to perform the work;
 - (d) Transportation arrangements;
 - (e) The estimated start and completion dates of the work;
 - (f) Discussion of pre-fabricated materials; and
 - (g) Relevant plans, blueprints, or specifications as requested by the Council or County.
- 7.4 At the pre-job conference, the prime contractor shall identify the Covered Project's safety inspector(s), safety officer(s), and any Jobsite Safety Accountability Supervisor.

ARTICLE 8

JOINT ADMINISTRATIVE COMMITTEE MEETINGS

- 8.1 The parties to this Agreement will form a five person Joint Administrative Committee (JAC). The Committee will be comprised of two (2) representatives selected by the Council, two (2) representatives selected by the County, and one (1) community representative, nominated by the Board of Supervisors and agreeable to the Council. The parties shall appoint an alternate. The JAC meetings will be convened by the Coordinator

and chaired jointly by a representative of the Council and the County, and a quorum shall be three members, including at least one (1) from the County and one (1) from the Council. The purpose of these meetings is to promote harmonious labor/management relations, ensure adequate communications and advance the proficiency and efficiency of the employees and the Contractors for Covered Projects. These meetings will also include discussion of the schedule of upcoming projects and the safety of work performed for Covered Projects.

- 8.2 The JAC shall appoint a Joint Administrative Subcommittee, comprised of one (1) representative of the County and, one (1) representative of the Council for the purpose of convening to confer in an attempt to resolve any grievance that has been filed consistent with Article 22. This Subcommittee shall meet as required to resolve grievances by consensus vote, which resolution shall be final and binding. If no resolution can be mutually agreed upon, the grievance shall proceed to the grievance procedure outlined in Article 22, Step 4.
- 8.3 The JAC may review and make recommendations regarding overall operation of the Local Hiring Program (set forth in Article 18), and may make recommendations regarding compliance approaches in cases of noncompliance. Two years after the effective date of this Agreement, the JAC shall review overall operation and implementation of the Local Hiring Program to date, and, with affirmative vote from representatives of both the Council and the County, may (i) revise the definition of Disadvantaged Resident in Section 1.1 to align it with other local jurisdictions or to improve program implementation; or (ii) mutually agree to revise the Percentage Requirements (as set forth in the Local Hiring Program). In either case such revised definition or requirements shall be provided to Contractors and take effect for Contractors and all Parties without requiring re-execution of this Agreement.
- 8.4 JAC Meetings.
- 8.4.1 The JAC will meet monthly at the call of either chairs.
- 8.4.2 The Coordinator will establish agenda topics with input from the Committee and send notices of meetings with the agenda in advance of the meetings.
- 8.4.3 The JAC will receive reports and consider work progress and practices, Resident and Disadvantaged Resident utilization, pre-apprentice recruitment, training and referral, and apprentice development and utilization.
- 8.4.4 The Coordinator and the Contractors shall report progress on these issues and provide ongoing workforce projections for their work.

ARTICLE 9

COORDINATOR

- 9.1 The County will designate a Coordinator, who will be responsible for the administration and application of this Agreement.
- 9.2 The Coordinator shall endeavor to facilitate harmonious relations between the Contractors and Unions hereto and will conduct the Joint Administrative Committee meeting at the request of either joint chair referred to in Article 8 above. The Coordinator shall not be responsible for the acts of the Contractors or Unions signatory hereto, or County, and will not be a party to any arbitration or litigation arising out of this Agreement.

ARTICLE 10

UNION RECOGNITION AND REPRESENTATION

- 10.1 The Contractors recognize the Unions as the sole and exclusive collective bargaining representatives for all craft employees on Covered Projects, and all such employees shall be represented by a Union for the duration of their employment on the Project.
- 10.2 All employees who are employed by the Contractors shall, as a condition of employment, on or before the eighth (8th) day of consecutive or cumulative employment for a construction contract subject to this Agreement, be responsible for the payment of the applicable monthly working dues and any associated fees uniformly required for union membership in the Union(s). However, there is nothing in this Agreement that would prevent non-union employees from joining the Union(s).
- 10.3 Authorized representatives of the Union(s) shall have access to the project site at all times when work is being, has been or will be performed. Such representatives shall comply with the reasonable visitor safety and security rules established for the project. Access for Union(s) representatives will not be unduly restricted.
- 10.4 The treatment and payment of stewards shall be in accordance with the applicable MLA.

ARTICLE 11

NO STRIKES - NO LOCKOUTS

- 11.1 During the life of this Agreement, the Unions and their members, agents, representatives and employees shall not incite, encourage, condone or participate in any strike, walkout, slowdown, sit-down, stay-in, boycott, wobble, sympathy strike, picketing or other work stoppage or hand-billing on Covered Projects for any cause whatsoever, or any other type of interference of any kind, coercive or otherwise, and it is expressly agreed that any such action is a violation of this Agreement.

- 11.1.1 Withholding of employees for failure of a Contractor to meet its weekly payroll is not a violation of this Article 11; however, the Union shall submit documentation of the failure to pay to the Coordinator and shall give the affected Contractor and the Coordinator written notice seventy-two (72) hours prior to the withholding of employees.
- 11.1.2 Should a Contractor performing work on a Covered Project be delinquent in the payment of Trust Fund contributions required under this Agreement with respect to employees represented by the Union, withholding of employees for failure of a Contractor to make Trust Fund contributions is not a violation of this Article 11; however, the Union or Trust Fund shall submit documentation of the failure to the Coordinator and shall give the affected Contractor and the Coordinator written notice seventy-two (72) hours prior to the withholding of employees. The documentation will indicate the amount of delinquency asserted and the period that the delinquency covers, to the best of the Union's or Trust Fund's knowledge. The Union or Trust Fund may request that the Contractor issue joint checks payable to the Contractor and the appropriate employee benefit Trust Fund until such delinquencies are satisfied, and the Contractor agrees that the County may issue joint checks to the Contractor and the Trust Fund until the delinquency is satisfied. It is agreed, however, with respect to Contractors delinquent in trust or benefit contribution payments, that nothing in this Agreement shall affect normal contract remedies available under the local collective bargaining agreements.
- 11.2 Expiration of Local and Other Applicable Agreements. It is specifically agreed that there shall be no strike, sympathy strike, picketing, lockout, slowdown, withholding of work, refusal to work, walk-off, sick-out, sit-down, stand-in, wobble, boycott or other work stoppage of any kind as a result of the expiration of any local, regional or other applicable labor agreement having application on the Covered Project and/or failure of the parties to that agreement to reach a new contract. If a Master Labor Agreement between a Contractor and the Union expires before the Contractor completes the performance of a construction contract and the Union or Contractor gives notice of demands for a new or modified Master Labor Agreement, the Union agrees that it will not strike or withhold labor from the Contractor for said contract for Covered Work and the Union and the Contractor agree that the expired collective bargaining agreement shall continue in full force and effect for Covered Work until a new or modified Master Labor Agreement is reached between the Union and Contractor. If the Union and Contractors agree to an interim agreement that will apply until a new Master Labor Agreement is reached, then, the Contractor may work under the terms of the interim agreement until a new or modified Master Labor Agreement is reached between the Union and Contractor. If the new or modified Master Labor Agreement reached between the Union and Contractor provides that any terms of compensation of the Master Agreement shall be retroactive, the Contractor agrees to comply with any retroactive terms of the new or modified Master Labor Agreement to its effective date which is applicable to employees who performed work for the project during the interim period. Such compliance shall occur within seven (7) days after notification by the Union.

- 11.3 In consideration of the foregoing, the Contractor shall not incite, encourage or participate in any lockout or cause to be locked out any employee covered under the provisions of this Agreement. The term "lockout" does not refer to the discharge, termination or layoff of employees by the Contractor for any reasons in the exercise of its rights as set forth in any provision of this Agreement, nor does "lockout" include the County's or Contractor's decision to terminate or suspend work for the site or any portion thereof for any reason.
- 11.4 Any employee or employees inciting, encouraging or participating in any strike, slowdown, picketing, sympathy strike or other activity in violation of this Agreement may be subject to immediate discharge and the procedure under this Article 11, if invoked.
- 11.5 Upon written or electronic mail notice of a violation to the Local and/or International Union offices, the Union and its officers shall take immediate action and will use their best efforts to prevent, end or avert any such aforementioned activity or the threat thereof by any of its officers, members, representatives or employees, either individually or collectively, including but not limited to, publicly disavowing any such action and ordering all such officers, representatives, employees or members who participate in such unauthorized activity to cease and desist from same immediately and to return to work and comply with its orders. The Contractor shall have the right, in the event of a work stoppage by the Union, to replace the employees represented by the Union in violation of this Agreement. Nothing in this Agreement shall be construed to limit or restrict the right of any of the parties to this Agreement to pursue fully any and all remedies available under law in the event of a violation of this Article 11.
- 11.6 Any party to this Agreement may institute the following binding arbitration procedure when such a breach is alleged. In the event a party institutes this procedure, arbitration shall be mandatory.
- 11.6.1 The party invoking this procedure shall immediately notify Robert Hirsch, who the parties agree shall be the permanent Arbitrator under this procedure. Thomas Angelo shall serve as alternate in the event that the permanent Arbitrator is unavailable at any time. If neither Robert Hirsch nor Thomas Angelo is available to hold a hearing within 24 hours or another short timeframe as mutually agreed, an arbitrator shall be selected using the provisions of Article 22 (Grievance Procedure). Notice to the Arbitrator shall be by the most expeditious means available, with written notice by email or similar means to the party alleged to be in violation and the involved Union General President. Should either the permanent or the alternate arbitrator identified above no longer work as a labor arbitrator, the County and the Council shall mutually agree to a replacement.
- 11.6.2 Upon receipt of said notice the Arbitrator named above or the alternate shall designate a place for, schedule and hold a hearing within twenty-four (24) hours or another short timeframe as mutually agreed.

- 11.6.3 The Arbitrator shall notify the parties by electronic mail or similar means of the place and time chosen for the session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an award by the Arbitrator.
- 11.6.4 The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred, and the Arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court or other arbitration proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the award. The Arbitrator shall order cessation of the violation of this Article and other appropriate relief, and such award shall be served on all parties by hand or registered mail upon issuance.
- 11.6.5 Liquidated Damages: A party found to have violated the provisions of the No Strike-No Lockout section in this Article 11 shall cease such violation within eight (8) hours of the award of the Arbitrator. Should the violation continue past eight (8) hours, the party in violation shall pay to the affected party as liquidated damages either the actual damages incurred or the sum of ten thousand dollars (\$10,000.00) per shift, or portion thereof, whichever is greater, until such violation is ceased. The Arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.
- 11.6.6 The award shall be final, binding and non-reviewable as to the merits. A judgment of any court of competent jurisdiction shall be entered upon the award, which may be enforced by any such court, upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. Electronic mail or similar notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's award as issued under Section 11.6.4 of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the Arbitrator's award shall be served on all parties by hand or by delivery to their last known address or by registered mail.
- 11.6.7 Any rights created by statute or law governing arbitration or injunction proceedings inconsistent with the above procedure, or which interfere with compliance therewith, are hereby waived by the parties to whom they accrued, to the extent permitted by law.
- 11.6.8 The costs of the arbitration, including the fee and expenses of the Arbitrator, shall be borne equally by the affected Union(s) and the affected Contractors.

- 11.6.9 The procedures contained in this Section 11.6 shall be applicable only to alleged violations of this Article. Discharge or discipline of employees for violation of this Article shall be subject to the grievance and arbitration procedures of Article 22.

ARTICLE 12

MANAGEMENT RIGHTS

- 12.1 The Contractor retains full and exclusive authority for the management of their work forces for all work performed under this Agreement. This authority includes, but is not limited to, the right to:
- 12.1.1 Plan, direct and control the operation of all the work.
 - 12.1.2 Decide the number and types of employees required to perform the work safely and efficiently. The lawful manning provisions of the applicable Master Labor Agreement shall be recognized.
 - 12.1.3 Hire, promote and lay off employees as deemed appropriate to meet work requirements and/or skills required, consistent with this Agreement and the applicable MLA.
 - 12.1.4 Require all employees to observe the County's Covered Project Rules, the Contractor's Covered Project Rules, Security and Safety Regulations, consistent with the provisions of this Agreement. The Contractor's and County's Project Rules and Regulations shall be reviewed and mutually agreed upon at the Pre-Job meeting and supplied to all employees and/or posted on the jobsite.
 - 12.1.5 Discharge, suspend or discipline employees under the applicable MLA.
 - 12.1.6 Assign and schedule work at its sole discretion and determine when overtime will be worked consistent with this Agreement and the applicable MLA.
 - 12.1.7 Utilize any work methods, procedures or techniques and select and use any type or kind of materials, apparatus or equipment regardless of source, manufacturer or designator, in accordance with this Agreement.
- 12.2 The foregoing listing of management rights shall not be deemed to exclude other functions not specifically set forth herein. The Contractors, therefore, retain all legal rights not specifically enumerated in this Agreement.

ARTICLE 13

WORK RULES

- 13.1 Work Rules shall be governed by the applicable MLA for each craft.

ARTICLE 14

WAGE SCALES AND FRINGE BENEFITS

- 14.1 All employees covered by this Agreement shall be classified and paid in accordance with the classifications, wage scales, and fringe benefits contained in the appropriate MLAs, which have been negotiated by the historically recognized bargaining parties and in compliance with the applicable general prevailing wage determination made by the Director of Industrial Relations pursuant to the California Labor Code.
- 14.2 For the duration of its work on a Covered Project, the Contractors agree to recognize and put into effect such increases in wages and recognized fringe benefits as shall be negotiated between the various Union(s) and the historically recognized local bargaining parties on the effective date as set forth in the applicable MLA. The Union(s) shall notify the Contractors in writing of the specific increases in wages and recognized fringe benefits and the date on which they become effective.
- 14.3 The Contractors hereby adopt and agree to be bound by the written terms of the legally established Trust Agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of, such appropriately qualified employee fringe benefit funds established by such appropriate Trust Agreements. The Contractors authorize the parties to such Trust Agreements to appoint Trustees and successor Trustees to administer the trust funds, and hereby ratify and accept the Trustees so appointed as if made by the Contractors.
- 14.4 If a Contractor fails to pay wages or benefits, the County agrees to honor a properly submitted, legally enforceable Stop Payment Notice.

ARTICLE 15

HOURS OF WORK, OVERTIME, SHIFTS and HOLIDAYS

- 15.1 The hours of work, establishment of overtime and travel time premiums, and the establishment of shifts and shift pay shall be governed by the applicable MLA for each craft and in accordance with the current General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to the California Labor Code. It is understood that the County and prime contractor may, at their discretion, establish a uniform starting time and/or ending time for a Covered Project, based on project needs.

In such cases the County and prime contractor shall notify the Council and provide an opportunity to meet and discuss.

- 15.2 Holidays and designated days off will be in compliance with the applicable General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to the California Labor Code, unless otherwise set forth in the MLA.

ARTICLE 16

HEALTH AND SAFETY

- 16.1 The employees covered by the terms of this Agreement shall at all times, while in the employ of the Contractor, be bound by the safety rules and regulations as established by the County and Contractors and in accordance with OSHA/Cal-OSHA. These rules and regulations will be published and posted at conspicuous places throughout the Covered Project site.
- 16.2 In accordance with the requirements of OSHA/Cal-OSHA, it shall be the exclusive responsibility of each Contractor working on a Covered Project to assure safe working conditions for its employees and compliance by them with any safety rules contained herein or established by the Contractors or the County. Nothing in this Agreement shall in any way be construed to make the Union(s) or the County liable for safety violations on the Covered Project.
- 16.3 The Parties and the Contractors agree to abide by the substance abuse policies contained in the applicable MLA, subject to Article 12. Should the County decide that there is a need for an OCIP on a Covered Project, the Parties and the Contractors mutually agree to the side letter attached as Exhibit C, with Council signature on behalf of all Union parties.
- 16.4 Work on Fire Sprinkler Systems: All inspections on a Fire Sprinkler System shall be performed by an ASSE 15000 certified Sprinkler Fitter who is registered with the Office of the California State Fire Marshall. All testing and/or maintenance performed on any Fire Sprinkler System shall be performed by an individual who has graduated from a state-approved apprenticeship program. All apprentices working on fire protection systems shall be registered with a state-approved apprenticeship program.

ARTICLE 17

REFERRAL PROCESS

- 17.1 The Union(s) shall be the primary source of all craft labor employed on Covered Projects. However, in the event that a Contractor has its own core workforce, the Contractors may request by name, and the Union(s) shall honor, referral of persons who have applied to

the local union for Covered Work and who demonstrate the following qualifications (“Core Employees”):

- 17.1.1 possess any license and/or certifications required by state or federal law for the Covered Work to be performed;
 - 17.1.2 have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;
 - 17.1.3 were on the Contractors’ active payroll for at least sixty (60) out of the one hundred forty (140) calendar days prior to the contract award;
 - 17.1.4 have the ability to perform safely the basic functions of the applicable trade; and
 - 17.1.5 be a Resident.
- 17.2 In the case of a Sole Proprietor that is self-performing work, the Sole Proprietor is not required to request a dispatch from the Union hall for themselves. If the Sole Proprietor hires employees or field staff for the project, it shall cease to be a Sole Proprietor as defined under this Agreement and shall comply with all Contractor obligations herein.
- 17.3 The Union(s) will first refer to such Contractors one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will thereafter refer one of such Contractors’ “core” employees as a journeyman and shall repeat the process, one and one, until such Contractors’ crew requirements are met or until such Contractors have hired no more than five (5) Core Employees, whichever occurs first. All Core Employees shall satisfy the requirements of Article 10 of this Agreement. Thereafter, all additional employees shall be hired exclusively from the Union(s)’ hiring hall out-of-work list(s), in accordance with this Agreement. For the duration of the Contractors’ work the ratio shall be maintained and when the Contractors’ workforce is reduced, Employees shall be laid off in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring. Contractors signatory to a Local, Regional, and/or National collective bargaining agreement(s) with a Union(s) shall be bound to the hiring hall provisions contained in the relevant MLA of the affected Union(s).
- 17.4 An Owner/Operator may be dispatched to the Covered Project as a core employee, provided that such Owner/Operator satisfies the qualifications in Article 1 and has complied with and completed all registration requirements with the Union prior to dispatch. In addition, upon request of the Council or any Union, the Owner Operator must provide documentation of insurance, a business license, and a valid motor carrier permit issued solely in their name. In the event the Owner/Operator hires employees or field staff for the Covered Project, it shall cease to be an Owner/Operator as defined under this Agreement and shall comply with all Contractor obligations herein.
- 17.5 All Contractors shall be bound by and utilize the registration facilities and referral systems established or authorized by the relevant Union so long as such procedures are in

compliance with applicable federal, state or local law. The Contractor shall have the right to determine the competency of all employees and may reject any referral for any reason, provided that the Contractor complies with Article 21, Non-Discrimination, and in accordance with the applicable MLA.

- 17.6 In accordance with the MLAs and in the event that referral facilities maintained by the Union(s) are unable, despite good faith efforts, to fill the request of a Contractor for employees within a forty-eight (48) hour period after such request is made by the Contractor, Saturdays, Sundays and Holidays excluded, the Contractor shall be free to obtain work persons from any source ("Alternative Employees"). Upon hiring Alternative Employees, the Contractor shall immediately notify the appropriate Union(s) of the name and address of the Alternative Employees hired, which Alternative Employees shall be bound by the provisions of this Article and the Union(s)' hiring hall rules.

ARTICLE 18

LOCAL HIRING PROGRAM

- 18.1 Local Hiring. The Parties and Contractors agree to work together to increase utilization of Residents and Disadvantaged Residents in the employment and apprenticeship opportunities created by the Covered Work. The requirements of this Article 18 are referred to as the Local Hiring Program.

- 18.2 Percentage Requirements. For each Covered Project, Contractors shall satisfy the following percentage requirements (the "Percentage Requirements"):

18.2.1 Residents shall perform at least 40 percent of all hours worked, on a craft-by-craft basis; and

18.2.2 Disadvantaged Residents shall perform at least 40 percent of all apprentice hours worked, for the project overall (*i.e.*, not on a craft-by-craft basis).

Prime contractors must comply with the Local Hiring Program either by demonstrating satisfaction of the Percentage Requirements or by demonstrating that all Contractors have satisfied the good faith efforts set forth in Section 18.3, below.

- 18.3 Contractors' Good Faith Efforts. Each Contractor must take the following steps in an attempt to satisfy the Percentage Requirements:

18.3.1. Each Contractor shall attend the scheduled pre-job meetings identified in Article 7. At this meeting, each Contractor must submit written workforce projections and projected worker-hours on a craft-by-craft basis, consistent with the Contractor's bid proposal. In the event the pre-job meeting is waived, each Contractor must submit written workforce projections to the Coordinator within

five days.

- 18.3.2 Resident Hiring – Overall Workforce. If staffing with Contractor’s current crew members has not enabled satisfaction of the Percentage Requirement in Section 18.2.1, the Contractor shall request referral of needed Residents from the appropriate Union hiring hall, using “name call,” “rehire,” or other available procedures to satisfy the Percentage Requirements. All requests for referrals under this subsection shall be in writing.
- 18.3.3 Disadvantaged Resident Hiring – Apprentices. If staffing with the Contractor’s current crew members has not enabled satisfaction of the Percentage Requirement in Section 18.2.2, the Contractor shall request from the Coordinator a copy of the list of Disadvantaged Residents set forth in Section 19.3 and shall sponsor a Disadvantaged Resident for enrollment in the applicable JATC if possible, or if sponsorship is not possible, shall request referral of a Disadvantaged Resident from the appropriate Union hiring hall or apprenticeship program, as required, using “name call,” “rehire,” or other available procedures to satisfy the Percentage Requirements. All requests for referrals under this subsection shall be in writing.
- 18.3.4 Contractors’ employees on sites other than Covered Projects may be credited toward satisfaction of the Percentage Requirements, if such hours are worked during term of the Contractor’s work on the Covered Project, and if such work is performed in any of the nine Bay Area counties of: Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara, Marin, Solano, Napa and Sonoma. The Contractor is responsible for providing written evidence, such as certified payroll records or other documents as approved by the JAC, of Resident and/or Disadvantaged Resident hours worked on such sites.

18.4 Oversight and Enforcement.

- 18.4.1 With day-to-day support from the Coordinator, the JAC shall provide oversight regarding the Local Hiring Program and will serve as the central forum for representatives of all interested or affected parties to exchange information and ideas and to advise the County staff and the Coordinator concerning the operation and results of the Local Hiring Program and the ongoing role of this Project Stabilization/Community Benefits Agreement as an integral component of the Local Hiring Program. As part of these responsibilities, the JAC will assess the obstacles to success of achieving inclusion of Residents and Disadvantaged Residents in the construction opportunities and shall make recommendations to overcome some of those obstacles.
- 18.4.2 Contractor requirements of the Local Hiring Program shall be terms of the prime contracts awarded by the County on Covered Projects, and enforcement actions shall be pursuant to contract compliance procedures set forth in such contracts.

Hours worked by workers who reside in states other than California shall not be considered in compliance determinations regarding the Local Hiring Program.

- 18.4.3 Contractors shall submit to the Coordinator copies of all information necessary to determine Contractor compliance with the Local Hiring Program, including dispatch requests and responses, records regarding hiring decisions of Residents and Disadvantaged Residents who were referred but not hired, and any other relevant information requested by the Coordinator.
- 18.5 Federally-Funded Projects. Requirements of this Article 18 shall not apply to Covered Projects for which funding sources prohibit such application. However, if funding sources require alternative hiring goals or requirements (such as the hiring requirements of Executive Order 11246, applicable to federally-funded projects), then such requirements shall apply, and all requirements and procedures set forth in this Agreement related to implementation of the Local Hiring Program shall be utilized to implement the alternative hiring goals or requirements imposed by the funding source, consistent with the applicable MLAs and hiring hall procedures. The County shall make good faith efforts to notify the Council prior to invoking this provision.
- 18.6 JAC Compliance Review. Any Contractor deemed not in compliance with the Local Hiring Program by the Coordinator shall be referred to the JAC to facilitate compliance, including establishing a corrective action plan. In the event the Contractor remains out of compliance, the JAC will refer the Contractor to the County for enforcement.
- 18.7 Apprentices. The Contractors/Employers shall employ Apprentices enrolled in a JATC in their respective crafts, to perform work that is within their capabilities and that is customarily performed by the craft in which they are indentured. Apprentice ratios shall be in compliance with the provisions of the California Labor Code and the applicable state prevailing wage determination. Consistent with the Master Agreements, there shall be no restriction on the utilization of apprentices in performing the work of their craft provided they are properly indentured and supervised.
- 18.8 Union Commitments. The Unions will exert their utmost efforts to recruit and enroll as Apprentices and journey-level workers sufficient numbers of skilled craft persons who are Residents and Disadvantaged Residents to enable Contractors to satisfy the Percentage Requirements on Covered Projects, and to meet the needs of the industry generally. The Unions will utilize all available mechanisms and relationships with the JATCs to refer to Covered Projects qualified and available Residents and Disadvantaged Residents. In addition, for purposes of the Local Hiring Program, notwithstanding any other provisions of this Agreement:
- 18.8.1 The Unions agree to accept requests of Contractors for Residents and Disadvantaged Residents on Covered Projects; that in performance of Covered Work, Residents and Disadvantaged Residents qualify as "name calls" (or "rehire" or similar term) for purposes of referral and hiring under the MLAs and hiring hall rules; and that Residents and Disadvantaged Residents shall be referred

to requesting Contractors as needed in order for Contractors to satisfy percentage requirements of the Local Hiring Program, and otherwise under same terms as other workers referred as name calls.

- 18.8.2 In limited circumstances where Section 18.8.1 conflicts with a Union's hiring hall rules, that Union shall refer Residents and Disadvantaged Residents actively searching for work to those Contractors who have provided the requisite information regarding staffing needs as set forth in Section 18.3.1, to ensure the Contractor can fulfill Local Hiring Program percentages on the Covered Project.
- 18.9 The Council and the Coordinator shall conduct a quarterly meeting or conference call with Union representatives, reminding them of the Percentage Requirements and referral procedures pursuant to this Agreement, and to discuss and address any issues arising in implementation.
- 18.10 Proposition 209 Repeal. If Article I, Section 31 of the California Constitution (*a.k.a* Proposition 209) is repealed during the term of this Agreement, and if the County, acting through the Board of Supervisors, subsequently establishes race- and/or gender-conscious percentage hiring requirements applicable to Covered Projects, then Parties shall meet and confer to discuss implementation of such requirements through this Agreement.

ARTICLE 19

REPORTING

- 19.1 This article describes reporting guidelines and responsibilities for parties signatory to this Agreement.
- 19.2 On a monthly basis, Contractors must submit reports on the status and progress of local hiring on a craft by craft basis, including utilization of Apprentices.
- 19.3 The Coordinator shall develop and maintain a current list of Disadvantaged Residents who are available to work on the Covered Projects. The Council shall assist with development of this list. The Coordinator shall provide the list to Contractors as set forth in Section 18.3.3.
- 19.4 Upon request from the Coordinator (but no more frequently than quarterly), the Unions shall make best efforts to provide available information regarding apprenticeship program advancement and employment status of Disadvantaged Residents who were newly enrolled in JATC apprenticeship programs pursuant to the Local Hiring Program.
- 19.5 On an annual basis, the Unions and the County shall jointly prepare and submit a report for the Board of Supervisors' review. This report shall include but not be limited to the Local Hiring Program, as well as challenges and benefits of this Agreement.

ARTICLE 20

HELMETS TO HARDHATS: VETERAN EMPLOYMENT

- 20.1 The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center) and Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the Contractors and the Unions.
- 20.2 The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on the Covered Project and of apprenticeship and employment opportunities for this Covered Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE 21

NON-DISCRIMINATION

- 21.1 The Unions and Contractors shall not discriminate against any employee or applicant for employment based on race, national origin, religion, sex, sexual orientation, political affiliation, membership in a labor organization, or any other basis recognized by law, in hiring and dispatching workers for the project.

ARTICLE 22

GRIEVANCE PROCEDURE

- 22.1 All disputes concerning the interpretation and/or application of this Agreement that do not fall within the Article 11 No-Strike/No-Lockout procedure, or Article 6 Work Assignments and Jurisdictional Disputes, shall be governed by the following grievance and arbitration procedure. The County may intervene and become a party to any grievance pursuant to this Agreement, as set forth below. Dispute resolution and enforcement procedures in this Agreement do not replace or affect the availability to County of contractual remedies and enforcement mechanisms set forth in prime contracts or County contract administration guidelines and procedures.

22.2 Grievances regarding interpretation and/or application of this Agreement shall be pursued according to the following provisions:

22.2.1 A grievance shall be considered null and void if not brought to the attention of the parties within ten (10) working days after the grievance is alleged to have occurred but in no event more than thirty (30) days after the charging party became aware of the event giving rise to the dispute. The grieving party shall give notice of the grievance to the Coordinator.

22.2.2 Grievances regarding provisions of this Agreement shall be settled or otherwise resolved according to the following Steps and provisions. Upon mutual request by the parties to the grievance, the Coordinator may facilitate the processing of disputes under this Article, including the scheduling and arrangement of facilities for meetings, administration of the selection of the arbitrator to hear the case (including coin toss), and any other administrative matters necessary to facilitate the timely disposition of the dispute. However, it is the responsibility of the principal parties to any pending dispute to ensure that the applicable time limits outlined in this Article are met.

Step 1: The parties' representatives shall attempt to resolve the grievance with the participation of the relevant craft supervisor or steward.

Step 2: In the event the matter remains unresolved in Step 1 above, within five (5) working days, the grieving party shall reduce the grievance to writing provide such written account of the grievance to all responding parties, with a copy to the County, for discussion and resolution. The County may join the grievance as a grieving or responding party within thirty (30) days after receiving such notice.

Step 3: In the event that the representatives are unable to resolve the dispute with approval of all parties by the date five (5) working days after its referral to Step 2, then any involved party may submit it within the next five (5) working days to the Joint Administrative Subcommittee, established in Section 8.2, which shall meet within five (5) working days after such submission (or such longer time as is mutually agreed upon by the representatives on the Joint Administrative Subcommittee) in an attempt to resolve the grievance. Regardless of which party has initiated the grievance proceeding, prior to the meeting of the Joint Administrative Subcommittee, the Union shall notify its international union representative(s), which shall advise all parties if it intends on participating in the meeting. The participation by the International Union Representative in this Step 3 meeting shall not delay the time set herein for the meeting, unless otherwise mutually agreed by all parties. Decisions by the Joint Administrative Subcommittee shall be by majority vote with such resolutions to be final and binding on all parties to the grievance.

Step 4: If the dispute is not resolved by the Joint Administrative Subcommittee within 10 days after submission to the Joint Administrative Subcommittee, then the grieving party may, within five (5) working days, initiate submission of the dispute to arbitration. The time limits set out in this procedure may, upon agreement of all parties to the grievance, be extended. Initiation of submission to arbitration, request for extension of time limits, and agreement to extend such time limits, shall be in writing with copies to all parties in order to be effective.

Step 5: Within seven (7) calendar days after arbitration initiation pursuant to Step 4, the parties to the grievance shall choose an arbitrator for final and binding arbitration. The arbitrator shall be selected by the alternate striking method from the following list. If there are more than two parties to the grievance, alternate strikes shall be between grieving as a group and responding parties as a group. The party or group who shall strike the first name shall be selected by the toss of a coin. (1) Barbara Kong-Brown; (2) Morris Davis; (3) Robert Hirsch; (4) William Riker; (5) Katherine Thomson; (6) Carol Vendrillo; (7) David Weinberg; (8) Joel Schaffer; (9) Martin Gran. Should all grieving or all responding parties to the procedure fail or refuse to participate in the hearing, if the Arbitrator determines that proper notice of the hearing has been given, said hearing shall proceed to a default award. The Arbitrator's award shall be final and binding on all parties to the arbitration. The costs of the arbitration, including the arbitrator's fee and expenses, shall be borne equally by the parties to the arbitration. If there are more than two parties to the arbitration, the costs of arbitration shall be borne equally between the grieving parties as a group and responding parties as a group. The Arbitrator's decision shall be confined to the question(s) posed by the grievance and the Arbitrator shall not have authority to modify amend, alter, add to, or subtract from, any provisions of this Agreement.

22.3 Should any of the arbitrators listed in this Article or Article 11 no longer work as a labor arbitrator, the City and the Council shall mutually agree to a replacement.

22.4 Where an issue is addressed in this Agreement and an MLA, this Agreement shall prevail. Where an issue is addressed in an MLA and not in this Agreement, the MLA shall control. Grievances between a Union(s) and a Union(s)' signatory contractor involving interpretation or application of the Master Agreement shall be governed by the grievance procedures contained in the Master Agreement. All disputes involving the discipline and/or discharge of an employee shall be resolved through the grievance and arbitration provisions contained in the Master Labor Agreement for the craft of the affected employee. This Agreement shall not displace provisions of MLAs that prohibit workers from being disciplined or discharged without just cause.

22.5 In the event of a pending grievance regarding unpaid wages or benefits, the Council may request that the County withhold retention payments and/or require the Contractor involved in the grievance to obtain a bond sufficient to cover the potential

damages. However, the County may decline to withhold retention payments subject to the terms of the applicable construction contract.

ARTICLE 23

MISCELLANEOUS PROVISIONS

- 23.1 Counterparts. This Agreement may be executed in counterparts, such that original signatures may appear on separate pages, and when bound together all necessary signatures shall constitute an original. Facsimile signature pages transmitted to other parties to this Agreement shall be deemed equivalent to original signatures.
- 23.2 Warranty of Authority. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and each of the parties by signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

ARTICLE 24

ENTIRE AGREEMENT

- 24.1 This Agreement represents the complete understanding of the parties. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated, and each of the parties signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.
- 24.2 The Unions agree that this Agreement covers all matters affecting wages, hours and other terms and conditions of employment, and that during the terms of this Agreement, neither the Contractors, nor the Unions will be required to negotiate on any further matters affecting these or any other subject not specifically set forth in this Agreement except by mutual agreement of the Unions involved and the County.
- 24.3 The parties to this Agreement understand and agree that nothing in this Agreement shall supersede or take precedence over any Board policy or requirement including, but not limited to, the construction contract, contract documents, project manual, and general conditions for the Covered Project.
- 24.4 Provisions negotiated into any new or modified MLA which are less favorable to the Contractor shall not apply to work covered by this Agreement. Any disagreement regarding the application of the provisions of any new or modified MLA shall be resolved under the dispute and grievance arbitration procedures set forth in Article 22.

- 24.5 The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. All defined terms used in this Agreement shall be deemed to refer to the singular and/or plural, in each instance as the context and/or particular facts may require.

ARTICLE 25

GENERAL SAVINGS CLAUSE

- 25.1 Severability and Conflict with Law: It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any Article or provision of this Agreement shall be declared invalid, inoperative, or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the federal, state or local government, the Parties shall suspend the operation of each such article or provision during the period of invalidity. Such suspension shall not affect the operation of any provision covered in this Agreement to which the law or regulation is not applicable. Further, parties agree that if and when any or all provisions of this Agreement are finally held or determined to be illegal or void by a Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.
- 25.2 Requirements of Funding Sources: In the event a term of this Agreement conflicts with a condition of project funding by a Covered Project's funding source, the conflicting term of this Agreement shall not apply; however, the remainder of the Agreement shall remain in place. The County shall make good faith efforts to notify the Council prior to invoking this provision; make good faith efforts to explore with said funding source the degree to which the conflicting term may be applied; and argue for application of the term where possible. In no case shall this Agreement require the County to forego any funds for a Covered Project.

ARTICLE 26

DURATION OF AGREEMENT

- 26.1 Term: This Agreement shall become effective upon execution by the County and the Council and shall continue in full force and effect for ten (10) years. In the event the County or the Council wishes to amend, modify, or terminate this Agreement five (5) years from the effective date, written notice shall be delivered to other Parties no more than six (6) months prior to the five (5) year anniversary of the effective date. Notice by County to the Council shall constitute notice to all Unions. At the five-year juncture, (i) either the County or the Council may terminate this Agreement; (ii) the County and the Council may mutually choose to amend this agreement in writing; or (iii) if neither such

action is taken, this Agreement shall automatically be extended for the remainder of the ten-year term.

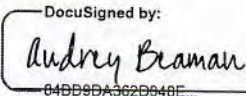
- 26.2 Amendment: This Agreement may be amended during the Term set forth above by mutual written agreement of the County and the Council. Amended terms shall take effect with regard to contracts for Covered Projects awarded by the County after the effective date of the amendment.

SIGNATURES

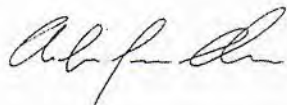
County of Alameda

By: 
President, Board of Supervisors

Approved as to Form:
Donna R. Ziegler, County Counsel

By: 
Audrey Beaman
Deputy County Counsel

Building & Construction Trades Council of Alameda County

By: 
Andreas Cluver, Secretary-Treasurer

Unions

Boilermakers Local #549 <hr/>	Bricklayers & Allied Craftworkers Local #3 <hr/>
Electrical Workers Local #595 <hr/>	Elevator Constructors Local #8 <hr/>
Insulators Local #16 <hr/>	Iron Workers Local #378 <hr/>
Laborers Local #67 <hr/>	Laborers Local #304 <hr/>
Plasterers Local #66 <hr/>	Operating Engineers Local #3 <hr/>
Plasterers and Cement Masons Local #300 <hr/>	Roofers & Waterproofers Local #81 <hr/>
Sheet Metal Workers Local #104 <hr/>	Sign & Display Local #510 <hr/>

<p>Sprinklerfitters Local #483</p> <hr/>	<p>Teamsters Local #853</p> <hr/>
<p>UA Steamfitters, Pipefitters, Plumbers & Gas Fitters Local #342</p> <hr/>	<p>UA Underground Utility & Landscape Irrigation Local #355</p> <hr/>
<p>District Council 16, International Union of Painters & Allied Trades, for itself and its affiliated Unions: Carpet & Lino Layers Local #12, Auto & Marine Painters Local #1176, Glass Workers Local #169, Painters Local #3</p> <hr/>	<p>Northern California Carpenters Regional Council, for itself and its affiliated Unions: Carpenters Local #2236, Carpenters Local #713, Lathers Local #68L, Millwrights Local #102, Pile Drivers Local #34</p> <hr/>

EXHIBIT A

SIDE LETTER

PUBLIC WORKS PROCUREMENT

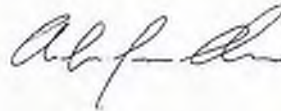
With regard to construction contracts procured by the Alameda County Public Works Agency:

1. For the first five years after the effective date of the Project Stabilization/Community Benefits Agreement to which this side letter is attached (PS/CBA), only construction contracts having an actual bid amount of \$3 million or more shall be considered Covered Projects subject to the PS/CBA, except with respect to construction trucking as set forth in Section 3.11 of the PS/CBA, which shall be covered by this PS/CBA if the project for which the trucking work is being performed has an actual bid amount of \$1 million or more.

2. Thirty months after the effective date, or earlier if the Parties mutually agree, the County shall evaluate and report to the Joint Administrative Committee any impacts the PS/CBA has had on the County's contracting programs implemented by the Public Works Agency. After such evaluation, the dollar threshold set forth in paragraph 1 may be revised for the remainder of the initial five year period by mutual agreement of the County and the Council.

County of Alameda

Building & Construction Trades Council of Alameda County:



By _____
President, Board of Supervisors

By _____
Andreas Cluver, Secretary-Treasurer

Date _____

Date _____

Approved as to Form:
Donna R. Ziegler, County Counsel

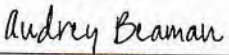
DocuSigned by:

 By: _____
 Audrey Beaman
 Deputy County Counsel

EXHIBIT B

CONTRACTOR AGREEMENT TO BE BOUND

The undersigned, as a Contractor or Subcontractor (CONTRACTOR) on a project of the County of Alameda, (hereinafter PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in the "Project Stabilization/Community Benefits Agreement for the County of Alameda" (hereinafter AGREEMENT), a copy of which was received and is acknowledged, hereby:

- (1) Accepts and agrees to be bound by the terms and conditions of the AGREEMENT, together with any and all amendments and supplements now existing or which are later made thereto;
- (2) The CONTRACTOR agrees to be bound by the legally established local trust agreements as set forth in Article 14 of the AGREEMENT and agrees to execute a separate subscription agreement(s) for such trust funds when such trust fund(s) require(s) such document(s).;
- (3) The CONTRACTOR authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the CONTRACTOR;
- (4) Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said AGREEMENT;
- (5) Agrees to secure from any CONTRACTORS (as defined in said AGREEMENT) which is or becomes a Subcontractor (of any tier) to it, a duly executed Agreement to be Bound in form identical to this document.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.

CONTRACTOR/SUBCONTRACTOR: _____

California Contractor State License No. or Motor Carrier (CA) Permit No.: _____

Name of Authorized Person (print): _____

Signature of Authorized Person: _____

Title of Authorized Person: _____

Telephone Number of Contractor: _____

Address of Contractor: _____

State Public Works Registration Number: _____

EXHIBIT C

SIDE LETTER

**COUNTY OF ALAMEDA
PROJECT STABILIZATION/COMMUNITY BENEFIT AGREEMENT**

In the event the County decides to cover any given Covered Project with an Owner Controlled Insurance Program (OCIP) during the life of the PS/CBA, the following language will apply:

The County intends to implement an OCIP, or wrap up insurance, on the Covered Project. All Contractors and employees performing work on the Covered Project, and not otherwise excluded from the OCIP; will be bound by the requirement of the OCIP Safety Manual; provided however, discipline imposed for alleged violations of the OCIP Safety Manual is subject to the Grievance procedures in Article 22. Any drug testing protocol established by the Contractor for the Covered Project shall satisfy the requirements of the OCIP Safety Manual and be consistent with the MLAs. In the event that there is a conflict between the MLAs and the OCIP requirements, the OCIP requirements shall prevail.

County of Alameda

**Building & Construction Trades Council of
Alameda County:**

By _____
President, Board of Supervisors

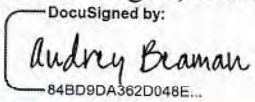

By _____
Andreas Cluver, Secretary-Treasurer

Date _____

Date _____

Approved as to Form:

Donna R. Ziegler, County Counsel

By: 
84BD9DA362D048E...

Audrey Beaman
Deputy County Counsel

EXHIBIT D

LIST OF CURRENT MASTER LABOR AGREEMENTS

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DOCUMENT 00 73 50

APPRENTICESHIP PROGRAM

1. Design-Build Entity and Subcontractors shall comply, and are responsible for ensuring their compliance, with the requirements of the California Labor Code concerning the employment of apprentices by Design-Build Entity or Subcontractors, including Labor Code §§ 1776, 1777.5, and 1777.6. Willful failure to comply may result in penalties, including loss of the right to propose on or receive public works contracts.
2. Labor Code § 1777.5 requires a Design-Build Entity or Subcontractor employing tradespersons in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of a public works project and which administers the apprenticeship program in that trade for a certification of approval. Pursuant to § 1777.5, the certificate will fix the ratio of apprentices to journeypersons that will be used in performance of the Contract. The ratio of apprentices to journeypersons in such cases shall not be less than 1 to 5 (1:5) unless:
 - 2.1 Unemployment for the previous three (3) month period in the area exceeds an average of fifteen percent (15%);
 - 2.2 The number of apprentices in training in the area exceeds a ratio of 1 to 5;
 - 2.3 There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
 - 2.4 Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his, her, or their life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.
3. Design-Build Entity is required to make contributions to funds established for administration of apprenticeship programs if Design-Build Entity employs registered apprentices or journeypersons in any apprenticeable trade on such contracts and if other Design-Build Entities on the public works site are making such contributions.
4. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of the California Department of Industrial Relations, or from the Division of Apprenticeship Standards and its branch offices.

END OF DOCUMENT