



COUNTY OF ALAMEDA

ADDENDUM No. 1

to

Request For Proposal - Project No. **18124**

for

Dublin Transit Center Parking Garage Project

This County of Alameda, General Services Agency (GSA), Request For Proposal Addendum #1 has been electronically issued to the Pre-qualified bidders via e-mail. E-mail addresses used are those provided by the prequalified Design Build Entities for their Proposal Manager representatives. This RFP Addendum will also be posted on the GSA Contracting Opportunities website located at http://www.acgov.org/gsa/purchasing/bid_content/ContractOpportunities.jsp.



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Issue Date: September 30, 2021

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TO : Pre-Qualified Design Build Entities for
Dublin Transit Center Parking Garage Project
Dublin, California

THIS ADDENDUM is hereby made a part of the Project Specifications and Other Bidding and Contract Documents issued on July 30, 2021 on the subject work as though originally included therein. The following amendments, additions and/or corrections shall govern this work.

The following ADDED or REVISED Procurement and Contracting Requirements documents issued by and attached to this Addendum replace the documents of the same document number issued with the RFP and are hereby made a part of the Contract requirements. They shall be binding as though included in the original Project Manual.

Document Number	Document Title	Date
Document 00 11 19	Request for Proposals (RFP) From Design-Build Entities	09/30/21
Document 00 42 53	Proposal Form	09/30/21
Document 00 72 53	General Conditions	09/30/21

Revisions are shown as follows: additions are underlined; deletions are struck-through. The Questions and answers that are issued by and attached to this Addendum are also hereby made a part of the Contract requirements. They shall be binding as though included in the original Project Manual.

Responses to Written Request for Information

- Q1) *Referencing 00 11 19 Request for Proposals Section 13 Criteria For Evaluating Proposals. Section 13.1.3 states that the highest 'combined score for Prequalification and proposal phases' will be recommended for award. This places an imbalanced weighting of points on the RFQ vs the RFP as the RFQ had a total of 561 possible points and the RFP only has 100 possible points. This makes the RFP response worth less than 20% of the RFQ scoring, which is far from standard?*
- A1) **Document 00 11 19 Request for Proposals Section 13.1.3 has been revised to state "When (or In) evaluating Proposals the highest score for the proposal phase only will be considered". It has always been the County's intent to determine the best value based on the RFP phase of the Project.**
- Q2) a- *DTC Specs Final document section 00 42 53 Proposal Form Part 4 Alternates is formatted for (6) Alternates, similarly Spec section 00 72 53 outlines 6 Add Alternates, this conflicts with alternates listed in BOD Part 1, Division 1, Part 1 Add Alternates which outlines (4) alternates. In summary Alternates 3 outlined in Spec section 00 72 53 is broken into 2 parts in the BOD Narrative and Alternates 4-6 outlined in Spec section 00 72 53 are not included in the BOD Narrative. Please clarify which Add Alternates are required?*
- b- *The BOD states Alternates #3 & 4 are for decorative glazing at the Stair towers, but specification section 00 72 53.2.5 states that only Alternate #3 is for decorative glazing. Should Alternate #4 listed in the BOD be lumped into Alternate #3 and Alternate #4 of the Specification section remain as listed for EV Charging stations.*
- A2) **The references to the Add Alternates in the BOD was not coordinated with the latest Alternates outlined in DTC document Section 00 42 53 Proposal Form and Section 00 72 53 General Conditions. Both of these sections have been revised and re-issued with this Addendum which supersedes any other previous references to the Alternates in the RFP. County intends to re-issue the BOD as a separate Addendum.**
- Q3) *Regarding scoring for the price proposal: assuming there is a maximum of 40 points, please confirm the following:*
- a) *The lowest price design-builder team will receive the full 40 points;*
- b) *The second and third place design-build team will receive a prorated amount of points based on the percent difference between the lowest proposer's number and their price? (As an example, if a proposer was in second place, and was 10% higher than the low, they would receive 36 points);*

County of Alameda, General Services Agency-Procurement
RFQ No. - Project No.18124, Addendum No. 1

c) Also, please explain how the one point per \$200,000 price reduction figures into the above.

A3) Please refer to the revisions of Sections 8.9, 13.2.1 and 13.3 #1 Contract Price (40 Points). The methodology to determine the total scores for Contract Price and the considerations for the Cost Limit have been revised.

Q4) *BOD Part 1 Project Overview, Section C: Design Considerations, Part 8: Precast vs. Post Tensioned Structure states in part “First was the 55’ height limit imposed on the building, inclusive of the solar array top of structure but exclusive of elevator overruns (changing this would require modifying the building entitlements and approved EIR)”. Bridging Document Architectural Elevations plan sheets indicate 56’-2” to the top of the metal frame supporting the PV, with PV panels extending above. Please confirm if this is in conformance with the height limit stated above, or do considerations need be made to reduce the height of the building in the event the PV is installed.*

A4) **The statement in BOD is misinterpreted for the building height limit imposed by the EIR. The final CEQA Addendum, dated May 2019 does not impose a maximum height of 55’ on the building. It states: “Assuming 5-floors, this would result in gross floor area of approximately 177,354 square feet, reaching a maximum height of 55 feet.” The 56’-2” Building Height is acceptable.**

Q5) *Please clarify the order of precedence among these documents:*

a) Part A & C: Specifications not all sheets are dated, however the dated sheets were all Revised 01/21 or later.

b) Part B: Bridging Documents -Basis of Design Narrative is dated July 29, 2021.

c) Part E: Bridging Documents, labeled Revision 4, Issued for RFP are dated 2021-07-29 but have no relevant changes from the Revision 3, 100% Bridging Documents dated 2020-08-19.

A5) **All of the documents issued as part of the RFP, regardless of the date shown on the various parts and pieces of the Project Manual, will have the same date of issuance as the RFP itself. Future revisions of any particular document will have the issuance date of the pertaining Addendum that contained those documents.**

Q6) *BOD Part 1 Project Overview, Section A: Overview and Goals, 2nd Bullet Point states in part “The County is exploring integration with Clipper and BART payment standards”. Please confirm there is no project scope associated with this possible integration.*

A6) **This is a future consideration. There is no project scope associated with this future integration.**

County of Alameda, General Services Agency-Procurement
RFQ No. - Project No.18124, Addendum No. 1

- Q7) *Public Works Department Memorandum Item 2. Offsite Improvements/A. Public Works comments/vi. and comment on Sheet C2.2 - Please confirm that Offsite improvement plan details for TI of 9 (Detail 2/Sheet C8.1) is to be provided for this project. Please note that City of Dublin Public Works comments on PC1 plans note use TI of 11.*
- A7) **All City of Dublin Public Works Department comments on Memorandum Item 2. Offsite Improvements were responded to by the County's resubmission to the City after the RFP was issued. We have since received subsequent 2nd round of comments back from the City. It is the County's intention to release a second Addendum with final agreement with the City of Dublin as to the specific items that will be the responsibility of the DBE to provide as part of the Encroachment Permit.**
- Q8) *Please confirm all application and permit fees associated with the County's submittal to the City of Dublin for the "Street Improvement Plans Associated with the Dublin Transit Center Parking Garage" project are paid by the County.*
- A8) **The City's plan check time and site development review fees will be paid by the County.**
- Q9) *At the pre-bid site walk, it was mentioned that the undeveloped area to the west of the site will be made available to the DBE as lay-down space for construction of the garage. Please confirm this is so.*
- A9) **The undeveloped area to the west of the site is the County land and the County intends to sell the land to the City of Dublin for a future housing development. We anticipate that the land will be available for staging for most of 2022 but the DBE should consider getting a permit from the City of Dublin for using the undeveloped portion of the Campus drive along the east side of the site as staging since this portion of Campus will not be used until the Project is completed. We have discussed both of these options with the City and will provide additional information in the next Addendum.**
- Q10) *Please provide concise information on the electrical scope of work on site including location and quantity (or performance criteria) for the following: Street lighting, Power utility Lines, Pad Mounted Utility Power Transformer, Telecom Utility, Pull Boxes. Describe what elements are existing to remain, what scope of work will be performed by others, and what scope of work is to be demolished, revised, added or otherwise included in the RFP scope.*
- A10) **Civil and landscape drawings show fixture location, rough power locations, etc. but final design of the electrical system will be up to the selected Design Build Entity. Please note, the design provides internal transformer, electrical rooms, etc.**
- Q11) *The BOD states Alternates #3 & 4 are for decorative glazing at the Stair towers, but specification section 00 72 53.2.5 states that only Alternate #3 is for decorative glazing. Should Alternate #4*

County of Alameda, General Services Agency-Procurement
RFQ No. - Project No.18124, Addendum No. 1

listed in the BOD be lumped into Alternate #3 and Alternate #4 of the Specification section remain as listed for EV Charging stations.

- A11)** The BOD Alternates #3 & 4 for decorative glazing at the Stair towers were intended to be one Add Alternate. DTC document Section 00 42 53 Proposal Form and Section 00 72 53 General Conditions have been revised and issued with this Addendum to include a “ Unit Pricing” requirement for the printing of the Digital files on glazing as specified in Section 08-81-00. County intends to re-issue the BOD with the correct language as a separate Addendum.
- Q12)** *Spec Section 00-73-73, refers to Section 12-17-00 Art Glass: that section is not found. Section 08-81-00 Decorative Glazing provides the fabrication method, but provides no pricing parameters describing the artwork. Please confirm section 12-17-00 is not used, and provide additional pricing parameters for the artwork.*
- A12)** Reference Spec Section 12-17-00 Art Glass within 00-73-73, is changed to Section 08-81-00. The artwork is Owner Provided in the form of a digital file. The artwork will be designed through the County’s Public Art Program and will be a full-color, custom image. The DBE is required to price the printing of the Digital files on glazing as specified in Section 08-81-00. The description of the type of glazing and the quantity can be found on the Basis of the Design Narrative and on the Bridging Documents.
- Q13)** *Please confirm there are no parking booths required for this project.*
- A13)** There are no parking booths required for this project.
- Q14)** *Regarding the Bid Form 00-42-53, page 3, please confirm “Building Total” and “Construction Total” scopes are the same.*
- A14)** Please see revised Bid Form 00-42-53 which has removed Building Total line since “Construction Total” represents the same scope.
- Q15)** *Can you please provide a Title Report for the project?*
- A15)** Please find the Title Report in the reference material provided with this Addendum.
- Q16)** *BOD Part 2 Systems Description, Division 5: Sitework under the heading Campus Drive, paragraph 4 it describes a Coffee Kiosk, Café Tables and Chairs. Please confirm if the Coffee Kiosk, Café Tables and Chairs are to be included as part of the DBE price. If so, what utility service is required at that location?*
- A16)** This is intended to be a future mobile coffee service and not part of the DBE price.
- Q17)** *DTC Specs Final document section 00 11 19 part 13.3.2.b Sustainable Design states in part “The DBE is required to deliver a Project that meets the Parksmart Gold Certification requirements as outlined in Section 01 81 13” this is repeated throughout other sections of the DTC Specs Final. This is contradictory to the Basis of Design which states in part “The garage will be designed for*

County of Alameda, General Services Agency-Procurement
RFQ No. - Project No.18124, Addendum No. 1

sustainability, targeting at least the “ParkSmart” Silver certification”. Additionally, the DTC Specs Final document section 00 72 53 part 2.2.7 is a request for Add Alternate #5: Requirements associated with the Parksmart Gold certification. Please clarify the expectation for ParkSmart certification.

- A17)** County’s original goal is to meet the Parksmart Gold Certification. The Parksmart Planning Worksheet on Sheet A008 is the County’s initial checklist for the Parksmart Gold Certification that has gone through initial review and approval by the USGBC. County has considered the delivery of a Project that meets the Parksmart Gold Certification an Additive Alternate as outlined in Section 00 72 53 General Conditions. It is the County’s intent to only price the Parksmart Gold Certification at this point. If County chose not to take this the Alternate, it reserves the right to develop a Parksmart Silver Certification checklist with the support of the DBE during the Detail Design Phase of the Project.
- Q18)** *In reference to the Life Cycle Cost Analysis, listed under Scored Factors for Evaluation, item b. Sustainable Design/Life Cycle Costing, mentions using the Federal Energy Management Program for a LCC model analysis and we would like to request if the County can waive the FEMP for an alternative software model package.*
- A18)** The Federal Energy Management Program for a LCC model analysis is the County’s standard for Life Cycle Cost Analysis. The County sees no reason to waive this requirement for an alternative software when the Building Life Cycle Cost (BLCC) Program developed by the National Institute of Standards and Technology (NIST) is a free download and can be utilized by all DBE’s as a standard for Life Cycle Cost Analysis.
- Q19)** *There is a point discrepancy for Life Cycle. Under 13.3, the Life Cycle Cost is listed with 10 points, but in Section 3, LCCA adds up to 15 pts. Can you please confirm the total points for this section?*
- A19)** Section 3 b: Sustainable Design/Life Cycle Costing points corrected to 5 points instead of 10 points.
- Q20)** *How soon will the confidential Q/A be distributed to teams? Will it address all the questions/issues brought up by DBE’s?*
- A20)** As was noted during the confidential meetings, the Q/A will be responded to in an Addendum and only what is reflected in the Addendum will be considered part of the contract documents. Addendum #1 will address the Requests for Information that County could resolve without a more significant redesign and/or other reconsideration of County requirements. Any Request for Information that is not responded to in Addendum # 1 will be addressed in the subsequent Addendum #2.
- Q21)** *Final CEQA document page 40 identifies that the “County of Alameda GSA will ensure implementation of Prior EIR Mitigation Measure 4.3-1, including conducting a rare plant survey at the site prior to ground disturbing activities.” It also states that August is the optimal time to perform this survey. Please confirm that the County will perform this survey and implement any necessary mitigation measures resulting from the findings of the survey.*

County of Alameda, General Services Agency-Procurement
RFQ No. - Project No.18124, Addendum No. 1

There is a similar requirement on page 43 for burrowing owls. Due to the long term nature of the mitigation measure options, please confirm that the County will perform this survey and implement any necessary mitigation measures resulting from the findings of the survey.

- A21)** The County is in the process of completing a site assessment and will prepare a memo describing current site conditions and if any mitigation measures are required. It is anticipated that the portion of the site covered by the Project is not a currently a habitat for rare plants. This will be covered in Addendum #2.



- Q22)** *Public Works Department Memorandum Item 2. Offsite Improvements/A. Public Works comments/vii. and comment on Sheet C2.1 recommend saw cut line to coincide with lane line to prevent cut in travel path of vehicles, this will expand asphalt quantity by approx. 1-2 feet along entire length of Martinelli Way. Is this recommendation from City to be implemented?*
- A22)** All City of Dublin Public Works Department comments on Memorandum Offsite Improvements were responded to by the County's resubmission to the City after the RFP was issued. We have since received subsequent comments back from the City. It is the County's intent to release a second Addendum with the final agreement with the City of Dublin as to the specific items that will be the responsibility of the DBE to provide as part of the Encroachment Permit.
- Q23)** *Please provide the anticipated City water pressure from the main fire water line on Campus Drive?*
- A23)** City water pressure is provided with the Addendum as reference material.

- Q24)** *The PV Layout drawing, sheet A-206 of Part E – Bridging Documents indicates Metal Canopies surrounding the Exterior elevations of the Elevator/Stair roofs. There are similar canopies shown surrounding the North-East, North-West and South-West corners that are attached to the PV TS Post per wall sections 1 & 3/A-421. Are the canopies shown surrounding the North-East, North-West and South-West corners to be provide as part of the PV Array add alternate or as part of the base bid?*
- A24)** **Canopies/cornices and their structural supports are part of Base Bid. Response: See Column Schedule on Drawing S-205.**
- Q25)** *Should the truss joist shown on S205 be included in the Base Bid or Alternate 1? Please confirm structural supports for the PV Array (columns, trusses and/or beams) are design-build as part of the Alternate.*
- A25)** **Truss joists are part of the Alternate. Columns, trusses, beams are part of Alternate, EXCEPT for columns used to support canopies/cornices. See drawing S-205, Column Schedule.**
- Q26)** *Referring to the note shown on plan sheets: A-201, A-202, and A-203 requirement to paint all overhead structure white, does this include painting white the overhead utilities?*
- A26)** **Only the concrete structure needs be painted white. This is done to increase the amount of ambient reflected lighting form the light fixtures below.**
- Q27)** *Assuming window-washing can be done from the ground, please confirm there are no window-washing requirements for this project.*
- A27)** **See drawing A-206 - Window washing davit base locations are provided on top of the two stair towers to for washing of the curtainwall elements at each end of the building.**
- Q28)** *BOD Part 2 Systems Description, Division 2: Sitework, Part 4: Wheel-stops states "3' long concrete wheel stops. Paint reflective yellow for visibility, one per car stall, dowel into concrete slabs (coordinate location with PT cables)". We are concerned that this will result in a long-term maintenance issue, people tend to use them to stop their vehicle and the repeated impacts results in deterioration, they are a potential tripping hazard for pedestrian, and they are only code required at Accessible stalls. In consideration of these potential negative impacts would it be acceptable to eliminate wheel stops were not required by code?*
- A28)** **Wheel stops are to remain in the Project scope.**
- Q29)** *Public Works requests full right-of-way of adjacent street on various sheets of the Off-site plans (C1.2, C1.3, C2.1, C3.1, C7.1) however, surveys provided in RFP documents do not show entire ROW (curb ramps, curb and gutter, sidewalks, landscaping) on opposite side of streets surrounding the site. Will Alameda County provide this additional information, or does the DBE need to provide to satisfy City comments?*
- A29)** **Please refer to A-22 above. The required surveys have been completed by the Bridging team and will be submitted to the City of Dublin.**

- Q30)** *Under "Vehicle Wayfinding," it is mentioned that "other salient features" are to be provided with suspended steel signage with reflective letters/graphics within the garage ... " What other salient features specifically are required in addition to code required clearance bars, ADA spaces, and room signage?*
- A30)** **Other salient features are intended to be designed and provided by DBE. They will include signage to direct users to the BART Station or to other Transit hubs on the perimeter streets.**
- Q31)** *Under "Parking Stalls," wall/pole mounted steel signage with reflective letter/graphics are required at "other specialized spaces within the garage." Does this requirement include Compact Spaces and LEV/Carpool/Vanpool spaces?*
- A31)** **No, it is not required for Compact spaces, but yes it is required for LEV/Carpool/Vanpool spaces.**
- Q32)** *Per the Basis of Design, paragraph 16.6 it states to provide a Passive Distributed Antenna system (DAS). Please clarify if the DAS system for public use or will this system be used for ERRCS (police and fire department agencies)?*
- A23)** **It is for both Public and ERRCS.**
- Q24)** *Section 13 – "Criteria for Evaluating Proposals" outline the scoring and provide a format for grouping the scoreable elements of the proposal as well as outlining the "Pass/Fail Factors" (Section 13.2, on page 33 of 799) and the "Scored Factors" (Section 13.3, on page 34-36 of 799). Section 13 is followed up by Document 00 21 00 – RFP Master Deliverable List which includes items in addition to those outlined in Section 13. It is our understanding that information from both Section 13 and Document 00 21 00 must be included in our proposal. To ensure all information is included in all proposers' submittals, we request clarification on the where each item from Document 00 21 00 should be included in the proposal section outlined in Section 13. We have attached our effort to align these two necessary sections/documents of the RFP and appreciate the County's guidance.*
- A24)** **Document 00 11 19 Request for Proposals sets the parameters, the conditions including the County processes and selection criteria, and several other factors the County will use for this RFP while Document 00 21 00 is a master list outlining the format and the documents that the Proposal Package must include. For example, while the selection criteria for contract price and County's cost limit is outlined in Document 00 11 19, Document 00 42 53, the proposal form, will reflect the DBE proposal and Document 00 21 00 lists the Proposal form as one of the required deliverables for this RFP. The list is provided for the convenience of the bidders and the County. If there is any discrepancy between the master list and Document 00 11 19 (Request for Proposals from Design Build Entities), Document 00 11 19 shall prevail.**

- Q25)** *Document 00 42 53 Proposal Form, paragraph 4 states that bidder to provide price breakdown per Level 2 NIST Uniformat II Classification System. The Proposal Form does not have a price breakdown for Conveying. Please clarify in which category the cost for elevators should be listed?*
- A25)** **Conveying systems was added to the proposal form as category “g” and the categories following “g” were revised.**
- Q26)** *There are several documents that provide comments from the city planning departments. RFP states that the City of Dublin has no jurisdiction aside from a consultant on aesthetics and the offsite work. Could you please provide a list of these comments that should be included in the proposal and which will should not be incorporated?*
- A26)** **County has incorporated City’s comments into the Design. We are waiting for the City’s confirmation that it has no further comments on the exterior Architecture. This will be included in Addendum # 2.**
- Q27)** *Confirm City Public Works and Fire Departments have reviewed and accepted access around the building as shown on current RFP plans and no additional fire lane is required at the West.*
- A27)** **Fire Access was reviewed by the Fire Department in 2020 with no exceptions. See Drawing A-102. Fire access was agreed to at time of review.**
- Q28)** *ADA parking spaces cannot be provided with required California Building Code height clearances due to the current 2nd floor height limitation.*
- A28)** **Design team will modify height of lower floor from 15'-0" to 14'-0" and increase by one foot the second floor height within the building. Team will work to minimize impact to exterior facade to preserve visual 15' line and to ensure regular space of the floor openings from floors 2 - 5. This change will also reduce the length of the ramp on the ground floor, allowing vehicles to come straight from the main entry. This will be issued in a forthcoming addendum #2.**
- Q29)** *Please provide concise information on the electrical scope of work on site including location and quantity (or performance criteria) for the following: Street lighting, Power utility Lines, Pad Mounted Utility Power Transformer, Telecom Utility, Pull Boxes. Describe what elements are existing to remain, what scope of work will be performed by others, and what scope of work is to be demolished, revised, added or otherwise included in the RFP scope.*
- A29)** **Civil and landscape drawings show fixture location, rough power locations, etc. but final design of the electrical system will be up to the selected Design Build Entity. Please note, the design drawings provides internal transformer, electrical rooms, etc.**

DOCUMENT 00 11 19

**REQUEST FOR PROPOSALS (RFP)
FROM DESIGN-BUILD ENTITIES**

The COUNTY OF ALAMEDA, acting by and through its GENERAL SERVICES AGENCY (“County”), will receive competitive sealed Proposals from pre-qualified Design-Build Entities (“DBEs”) for the following public work:

**DUBLIN TRANSIT CENTER PARKING GARAGE PROJECT
(Project Number 18124)**

1. PROJECT DESCRIPTION AND SCOPE OF WORK

- 1.1 County of Alameda is developing a multi-level parking structure on a 2.4-acre County owned property (Parcel D-1) located at the Dublin Transit Center. This parcel is currently undeveloped, with a three-story residential building to the North, a five-story mixed-use building to the West, and the existing Dublin/Pleasanton BART Parking Garage to the South. The lot to the East of this parcel has not been developed, and plans have not been made for its use. The topography in the area is generally flat, and the site currently has a primarily pervious surface. The height of the proposed development is governed by the adjacent five story mixed-use development and the existing six-story Dublin/Pleasanton BART Parking Garage.

The total Project budget is estimated around \$34 Million with \$14 Million of funding coming from the Alameda County Transportation Commission and the remaining \$20 Million coming from grant funding to LAVTA from the Transit and Intercity Rail Capital Program (TIRCP) for the construction of this new parking garage to serve Tri-valley region commuters and the public at the BART Dublin Transit Center. The proposed parking structure will provide 525 parking spaces.

The County completed the environmental review process as required by the California Environmental Quality Act (CEQA) and retained AE-3 PARTNERS as Project design planners and bridging architects to complete the Design-Build bridging documents.

The Design-Build bridging documents are incorporated into this RFP and include the schematic design and performance design criteria including the architectural, landscape, structural and mechanical systems. Also included are on-site and off-site civil and utility design and construction documents for the site work. This portion of the bridging documents has been developed to a construction document level. The objective for the development and inclusion of a Site civil and utility Construction Document Package in this RFP is to accelerate the start of construction outside the Design/Build parking deck footprint and complete as much of the on-site and off-site civil and utility construction work prior to the start of parking structure construction and provide a pad-ready site.

Pursuant to an agreement between the County and the City of Dublin the City will review the site development plans and process the facility in a consultation role. The City will review and inspect off-site work under an encroachment/development review permit application. The County submitted the site civil and utility construction plans to the City of Dublin and is in the process to obtain the City of Dublin approval for the encroachment permit before the start of site work, Refer to Document 00 72 53 (General Conditions) for the detailed requirements of how to complete the Encroachment Permit Process.

The parking structure and site work will be plan checked and permitted by the Alameda County Public Works agency (PWA) and its division of Construction and Development Services. GSA submitted initial plans and initiated the PWA preliminary building code reviews. GSA has secured an agreement with PWA to allow separate submittals for review such as foundation and shell submittal packages to accelerate the Project schedule.

1.2 Site hazardous materials remediation

1.2.1 The scope of site hazardous materials remediation is described in Document 00 31 26 (Hazardous Materials Surveys).

1.3 The proposals must meet the requirements of the detailed Section 01 11 13 (Work Covered by Contract Documents), Section 01 11 20 (Design Services and Deliverables), and the bridging documents set forth more completely information describing the county's requirements.

2. **SUMMARY OF SELECTION PROCESS.**

2.1 The County intends to award a contract for the Work, using a design-build delivery model based upon best value as set forth in the "Request for Qualification" ("RFQ") and this Request for Proposal ("RFP"), in accordance with Public Contract Code Section 22164. The award of the Contract shall be made to the Design Builder whose proposal is determined, in writing, to provide the best value to the County.

2.2 The County has completed the required prequalification process and has prequalified design-build teams.

2.3 The design-build proposal will be evaluated based on the following:

2.3.1 Only prequalified DBEs may submit a Proposal for design and construction of the Project. The County will evaluate Proposals using a combination of Pass/Fail and Scored Factors.

2.3.2 If a contract for the Work is to be awarded, County staff will recommend to the Board of Supervisors for award of the Contract the DBE whose proposal provides the "best value" to the County, as those terms are used in Public Contract Code Section 22164, and obtains the highest overall combined score.

3. **CONTACT INFORMATION.** All inquiries and requests for information shall be addressed in writing (e-mail acceptable) to the County's Project Manager.

3.1 Mailing and street address of the County:

County of Alameda – General Services Agency
Capital Programs Department, Construction Services
1401 Lakeside Drive, Suite 800
Oakland, CA 94612

3.2 County's Project Manager:

Hadi Hadjarzadeh, Project Manager
Capital Programs Department, Construction Services
1401 Lakeside Drive, Suite 800

Oakland, CA 94612
Telephone: 510-208-9589
Fax: 510-208-3995
Email: Hadi.Hadjar@acgov.org

4. **DUE DATE AND RECEIPT OF PROPOSALS**

4.1 Sealed Proposals must be submitted to the County – General Services Agency at the address in Paragraph 4.4. below no later than **2:00 P.M.** on the following date:

4.1.1 Proposals are due – ~~October 14, 2021~~ **November 4, 2021**. The time of receipt will be determined by the Receptionist's date stamp at the office of the County. County may reject any Proposals received after the specified time and may return such Proposals to DBEs unopened.

4.2 Each DBE shall submit its Proposal in one or more sealed envelopes, boxes, or other containers (referred to herein as a "Proposal Package"). Proposal Packages shall be hand-delivered to County's receptionist at the **General Services Agency, Capital Program, Suite 800, 1401 Lakeside Drive, Oakland, California 94602**. All Proposal Packages should be marked as follows:

PROPOSAL FOR DUBLIN TRANSIT CENTER PARKING GARAGE PROJECT
(Project Number 18124)
Package ____ of ____

4.3 Submittals shall include five (5) hard copies of written submittal information, and one (1) electronic copy of the entire Package (on thumb drive) as outlined in this Article.

4.4 Proposal Packages shall be organized as outlined in the RFP Master Deliverable List (Document 00 21 00).

4.5 Each Proposal Package must contain at a minimum the following, fully completed:

4.5.1 Executive Summary: A letter summarizing each element of the Proposal, as appropriate, and identifying features the DBE believes make the DBE's Proposal the most advantageous Proposal to the County.

4.5.2 Pass/Fail Factors: Each DBE must respond to all of these items in the Paragraphs below.

4.5.3 Scored Material: Each DBE must respond to all items below.

4.5.4 Certification Regarding Material Changes. Each DBE shall either certify that (a) all information in, and provided with, the Pre-Qualification Questionnaire remains true and correct in all material respects as of the date of submitting their Proposal or (b) if there have been any material changes thereto, such material changes are reflected on a DBE's Material Changes List, submitted in accordance with Document 00 45 40.01 (Bidder Certifications).

4.5.5 Non-collusion Declaration. DBEs must submit Document 00 45 20 (Non-Collusion Declaration) with their Proposals. County may reject as non-responsive

any Proposal submitted without a Non-Collusion Declaration. No DBE may make or file or be interested in more than one Proposal for the same supplies, services or both.

5. OTHER INFORMATION AND PROCEDURES APPLICABLE TO PROPOSALS

5.1 INTERACTION WITH GOVERNING AGENCIES

- 5.1.1 Prohibited Contacts. DBEs are prohibited from contacting elected or appointed officials, staff or personnel of Alameda County, Livermore Amador Valley Transit Authority (LAVTA) and Alameda County Transportation Commission (Alameda CTC) on any matter related to the Project prior to the award of the Contract. Direct communication with the agencies identified above by the DBE will be grounds for disqualification.
- 5.1.2 Contact with Alameda County staff or personnel will be strictly limited to the protocols established by this RFP.
- 5.1.3 The County will provide an opportunity for DBEs to meet with appropriate agency representatives during the Proposal process, as needed.
- 5.1.4 Other Authorities Having Jurisdiction: The DBEs should be familiar with the requirements of the Other Authorities Having Jurisdiction. The DBE should understand the process, timeline, and fees for their regulatory review and approval.
- 5.1.5 Utility Companies: The DBEs should be familiar with the requirements of companies that will provide utility services to the Project. These include, but are not limited to PG&E, Zone 7 Water Agency, and the Dublin San Ramon Services District. The DBE should understand their process, timeline, and fees for utility service design and installation.

5.2 COUNTY OF ALAMEDA SUBCONTRACTOR OUTREACH PROGRAMS.

- 5.2.1 The County's Enhanced Construction Outreach Program ("ECOP") and Small Local Emerging Business ("SLEB") Program shall apply to this Contract. ECOP and SLEB forms are included in the Documents 00 62 38 (Enhanced Construction Outreach Program Design-Build) and 00 62 40 (Small Local Emerging Businesses Program) and must be submitted by DBEs in accordance with the requirements of those Documents and Document 00 62 30 (Subconsultant/Subcontractor Procurement).
- 5.2.2 The County has implemented a Contractor Technical Assistance Program ("CTAP") that will apply to this Project. The program seeks to increase the ability of small contractors to participate in this and other projects by providing them with, among other things, assistance in obtaining required bonds. The CTAP is described in Document 00 62 20.

5.3 COUNTY ARTS PROGRAM

- 5.3.1 DBEs are hereby notified that Alameda County Ordinance Code § 13.28.010 requires two percent (2%) of the total direct construction costs of the County Building be spent on public art approved by the County's Art Commission.

However, for this Project, the County has determined a maximum of one percent (1%) of the total direct construction costs will be allocated to public art. The scope of the Public artwork has been defined in Document 00 73 73 (Public Art Program Requirements) and is described as an item which is Owner-Designed / Contractor-Furnished and Installed (OD/CF/CI). Although the cost of the design concept is not part of DBE's Contract Price, DBE should anticipate and allow for coordination of its work with the Art Commission during the design and construction stages of the Project as part of its Proposal. This work is considered an additive Alternates to be priced separately.

5.4 **DEFINITIONS.** Except as otherwise set forth herein, all abbreviations and definitions of terms used in this Document are set forth in Section 01 42 13 (Abbreviations) and Section 01 42 16 (Definitions).

5.5 **SUBSTITUTIONS.**

5.5.1 Proposals shall be based on products and systems specified in the Bridging Documents. Except as provided in Subparagraph 5.4.6, below, listed materials, products, systems, and equipment are provided as examples of required quality levels. DBEs are encouraged to seek alternative manufacturers for equipment or materials which provide equal or better quality, competitive pricing, or other benefits to the Project.

5.5.2 The County is not responsible or liable in any way for a DBE's damages or claims related, in any way, to DBE basing its Proposal on any requested substitution that the County has not approved. DBEs 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 requested substitution and (b) all costs and claims arising from any cost or schedule impact resulting from any substitution not approved by the County. Substitution Procedures are described more fully in Section 01 61 00 (Product Requirements).

5.5.3 DBEs and materials suppliers 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:

5.5.3.1 DBEs may submit a Request for Substitution no later than fourteen (14) Days before the due date for Proposal submissions. The County reserves the right not to act upon a Request for Substitution until after Proposals have been submitted. Any Request for Substitution shall contain sufficient information, as set forth in Document 01 61 00 (Product Requirements and Substitutions), to allow the County to assess the acceptability of the product or system. Insufficient information shall be grounds for rejection of any Request for Substitution.

5.5.4 The County will issue Addenda listing substitutions approved before the applicable proposal submittal date, if any.

5.5.5 Except as is provided for in Document 00 72 53 (General Conditions) and Section 01 61 00 (Product Requirements and Substitutions), DBEs may submit a Request for Substitution after the issuance of Document 00 51 00 (Notice of Award) only

at the sole discretion of the County.

- 5.5.6 Items Which 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 by the County. These items are listed in Section 01 61 00 (Product Requirements and Substitutions).

5.6 ADDENDA

- 5.6.1 DBEs must direct all questions about the meaning or intent of any documents related to this Document 00 11 19 (Request for Proposals from DBEs) or the Contract Documents to the County in writing. The County will issue by formal written Addendum any interpretations or clarifications it considers necessary in response to such questions. The County will send all Addenda by electronic mail to all pre-qualified DBEs at the e-mail address supplied to the County by the DBE in its Pre-Qualification Questionnaire. DBEs shall acknowledge receipt from that e-mail address within two (2) business days. The process for addenda which are too large for submittal via electronic mail will be described via a preliminary addendum.
- 5.6.2 Submit questions promptly, and no later than 10 Days before the due date for Proposals. The County will not respond to questions received less than 10 Days before the due date for proposals.
- 5.6.3 Only information provided by the County in an Addendum shall be binding on the County; oral responses or any other interpretation or clarification will be without legal effect.
- 5.6.4 At the County's discretion, it may also issue Addenda to modify any documents related to this Document 00 11 19.
- 5.6.5 The DBE shall acknowledge its receipt of any Addenda in Document 00 42 53 (Proposal Form). DBEs may obtain a complete list of Addenda from the County.

5.7 INFORMATION REGARDING DBEs

- 5.7.1 In evaluating Proposals, County will consider the information provided in DBE's Response to Request for Statements of Qualifications, Proposal, the DBE's compliance with the prescribed requirements, and such other data as may be requested in this Document 00 11 19 (Request for Proposals from DBEs), DBE's presentation or interview, and any other information provided or discovered.
- 5.7.2 The County may conduct any investigations the County deems necessary to assist it in its evaluation of any Proposal and to establish the DBE's responsibility, qualifications and financial ability (and that of its proposed subcontractors, suppliers, and other persons and organizations) to perform and furnish the Work in accordance with the Contract Documents and DBE's Proposal, to County's satisfaction, and within the prescribed time. County shall have the right to communicate directly with DBE's surety regarding DBE's bonds.
- 5.7.3 DBEs must respond in a timely manner to all questions from the County regarding

their Proposals. A DBE's failure to provide prompt and complete responses may result in rejection of its Proposal and terminate the DBEs participation in the selection process.

5.8 ELECTRONIC DOCUMENTS.

5.8.1 County may, in its sole discretion, and solely as a convenience to DBEs, elect to provide various RFP Documents and/or other information on CD-ROMs or other electronic forms ("Electronic Copy"), in addition to hardcopy paper documents ("Hardcopy"). In all cases, the Hardcopy shall be referred to, and shall control, in the event of any inconsistency between a Hardcopy and an Electronic Copy.

5.8.2 DBEs are advised to check all electronic media for computer viruses before loading any files therefrom. DBEs 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 DBE acknowledges these risks and releases County, and its officers, employees, consultants, representatives, and agents harmless 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. DBEs acknowledge that Electronic Copies may not match Hardcopies, and that it is the responsibility of the DBEs to adapt Electronic Copies for their own use.

5.9 EXISTING CONDITIONS AND RELATED DATA.

5.9.1 DBEs may examine any available existing conditions information by giving County reasonable advance notice. Documents 00 31 26 (Hazardous Materials Surveys) and 00 31 32 (Geotechnical Data and Existing Conditions) apply 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 ground.

5.9.2 DBEs may request access to the Site to conduct investigations or testing using Document 00 25 17 (Access Request Form and Agreement). Before a DBE 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. All requests for Site access must be made at least 14 Days before Proposals are due.

5.10 **WAGE RATES.** The Project is a public work subject to the requirements of Labor Code Sections 1720, et seq. DBEs are required to comply with all applicable prevailing wage requirements and regulations. Copies of the general prevailing rates 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, are on file at the Office of the County and are deemed included in the Proposal Documents. Upon request, County will make available copies to any interested DBE.

5.11 **PROJECT STABILIZATION 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. DBE Proposals shall account for inclusion of the PSCBA and DBEs shall agree to be bound by and comply with the conditions of the PSCBA. DBEs are reminded that Section 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.

5.12 PUBLIC RECORDS ACT REQUESTS.

5.12.1 Pursuant to the Public Records Act, County will make available to the public after negotiations with the apparent successful Proposer are complete, but prior to award of Contract: DBE's Proposals (to the extent opened), all correspondence and written questions submitted during the Proposal period, all Proposal submissions opened in accordance with the procedures of this Document 00 11 19 (Request for Proposals from DBEs), and all subsequent Proposal evaluation information. Any submissions not opened will remain sealed and will be returned to the submitting DBE.

5.12.2 Except as otherwise required by law, County will not disclose information DBEs consider trade secrets or proprietary financial information that a DBE has designated confidential (including but not limited to the Technical Proposal). Any such trade secrets or proprietary financial information that a DBE believes should be exempted from disclosure must be specifically identified and marked as such by DBE. Blanket type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such.

5.12.3 Upon a request for records regarding a Proposal, County will notify the DBE involved within ten (10) Days from receipt of the request of the date on which the records will be made available for inspection. If the DBE timely identifies any additional proprietary, trade secret, or confidential commercial or financial information that DBE contends is not subject to public disclosure, and requests County to refuse to comply with the records request, DBE shall take all appropriate legal action and defend, at its sole cost and expense, County's refusal to produce the information in all forums; otherwise, County will without restriction make such information available to the extent required by Applicable Law.

5.12.4 Information disclosed in the Proposals and related materials are the property of County except data DBE identifies as proprietary. Subject to the requirements of the Public Records Act, reasonable efforts will be made to prevent the disclosure of information except on a need-to-know basis during the evaluation process.

5.13 RIGHTS RESERVED TO COUNTY.

5.13.1 County will determine at its sole discretion whether a Proposal is responsive and whether a DBE is responsible.

5.13.2 County may reject any and all Proposals and may waive, to the fullest extent permitted by law, any informalities or minor irregularities therein. County also reserves the right, in its discretion, to reject all Proposals and issue a further request

for Proposals for the Project or to prequalify additional DBEs.

- 5.13.3 County reserves the right: (i) to reject any nonconforming, non-responsive, unbalanced or conditional Proposal, (ii) to request other Proposals, and (iii) to reject a Proposal of any DBE if County believes that for any reason it would not be in the best interest of Project to give further consideration to a particular DBE. For purposes of this paragraph, an “unbalanced Proposal” is a Proposal having nominal/low prices for some work items and enhanced prices for other work items.

5.14 PROTEST PROCEDURE.

- 5.14.1 The County prides itself on establishing fair and competitive contracting procedures and on its commitment to following those procedures. The following procedure is provided in the event that prospective DBEs wish to:

5.14.1.1 Protest the DBE selection process (if DBE has identified objections to the selection procedure in Item 8 of Document 00 45 40.01 (Bidder Certifications)),

5.14.1.2 Appeal the staff recommendation to the Board of Supervisors regarding the Notice of Intent to Award the Contract.

- 5.14.2 The County will use reasonable effort to deliver by electronic mail the staff recommendation to the Board of Supervisors regarding award of the Contract (or Notice of Non-Award) to all prospective DBEs who submitted Proposals (as applicable) no later than the first business day after issuance, although any delay or failure to do so will not extend the applicable protest deadline.

- 5.14.3 Any Proposal protest by any prospective DBEs regarding any other Proposal must be submitted in writing to the County’s GSA–Office of Acquisition Policy, ATTN: Contract Compliance Officer, located at 1401 Lakeside Drive, 10th Floor, Oakland, CA 94612, Fax: (510) 208-9720, before 5:00 p.m. of the FIFTH (5th) business day following the date of issuance of the Document 00 51 13 (Notice of Intent to Award), not the date received by the prospective DBEs. A Proposal protest received after 5:00 p.m. is considered received as of the next business day.

- 5.14.4 The Proposal protest must contain a complete statement of the reasons and facts for the protest.

- 5.14.5 The protest must refer to the specific portions of all documents that form the basis for the protest.

- 5.14.6 The protest must include the name, address, email address, fax number and telephone number of the person representing the protesting party.

- 5.14.7 The County Agency/Department will notify all DBE’s of the protest as soon as possible.

- 5.14.8 Upon receipt of written protest, GSA–Office of Acquisition Policy, or designee, will review and evaluate the protest and issue a written decision. The GSA–Office of Acquisition Policy, may, at its discretion, investigate the protest, obtain additional information, provide an opportunity to settle the protest by mutual agreement, and/or

schedule a meeting(s) with the protesting DBEs and others (as appropriate) to discuss the protest. The decision on the Proposal protest will be issued at least ten (10) business days prior to the Board hearing or GSA award date.

- 5.14.9 The decision will be communicated by e-mail, fax, or US Postal Service mail, and will inform the DBE whether or not the recommendation to the Board of Supervisors or GSA in the Notice of Intent to Award is going to change. A copy of the decision will be furnished to all prospective DBEs affected by the decision. As used in this paragraph, a prospective DBE is affected by the decision on a protest if a decision on the protest could have resulted in the prospective DBE not being the apparent successful Best Value Proposer on their proposal.
- 5.14.10 The decision of the GSA-Office of Acquisition Policy on the protest may be appealed to the Auditor-Controller's Office of Contract Compliance & Reporting (OCCR) located at 1221 Oak St., Room 249, Oakland, CA 94612, Fax: (510) 272-6502 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 prospective DBE whose Proposal is the subject of the protest, all DBEs affected by the GSA-Office of Acquisition Policy's decision on the protest, and the protestor have the right to appeal if not satisfied with the GSA-Office of Acquisition Policy's decision. All appeals to the Auditor-Controller's OCCR shall be in writing and submitted within five (5) business days following the issuance of the decision by the GSA-Office of Acquisition Policy, not the date received by the Proposer. An appeal received after 5:00 p.m. is considered received as of the next business day. An appeal received after the FIFTH (5th) business day following the date of issuance of the decision by the GSA-Office of Acquisition Policy shall not be considered under any circumstances by the GSA or the Auditor-Controller OCCR.
- 5.14.11 The appeal shall specify the decision being appealed and all the facts and circumstances relied upon in support of the appeal.
- 5.14.12 In reviewing protest appeals, the OCCR will not re-judge the proposal(s). The appeal to the OCCR shall be limited to review of the procurement process to determine if the contracting department materially erred in following the Proposal or, where appropriate, County contracting policies or other laws and regulations.
- 5.14.13 The appeal to the OCCR also shall be limited to the grounds raised in the original protest and the decision by the GSA-Office of Acquisition Policy. As such, a prospective DBE is prohibited from stating new grounds for a Proposal protest in its appeal. The Auditor-Controller (OCCR) shall only review the materials and conclusions reached by the GSA-Office of Acquisition Policy or department designee, and will determine whether to uphold or overturn the protest decision.
- 5.14.14 The Auditor's Office may overturn the results of a bid process for ethical violations by Procurement staff, County Selection Committee members, subject matter experts, or any other County staff managing or participating in the competitive RFP process, regardless of timing or the contents of a protest.
- 5.14.15 The decision of the Auditor-Controller's OCCR is the final step of the appeal process. A copy of the decision of the Auditor-Controller's OCCR will be furnished

to the protestor, the Bidder whose Proposal is the subject of the protest, and all Bidders affected by the decision.

5.14.16 The County will complete the RFP protest/appeal procedures set forth in this paragraph before a recommendation to award the Contract is considered by the Board of Supervisor or GSA.

5.14.17 The procedures and time limits set forth in this paragraph are mandatory and are each Bidder's sole and exclusive remedy in the event of RFP Protest. A Bidder's failure to timely complete both the protest and appeal procedures shall be deemed a failure to exhaust administrative remedies. Failure to exhaust administrative remedies, or failure to comply otherwise with these procedures, shall constitute a waiver of any right to further pursue the protest, including filing a Government Code Claim or legal proceedings.

PROPOSAL PROCESS AND SCORING

6. **LIMITED PARTICIPATION.** Only DBEs that the County has pre-qualified pursuant to the process described in the document entitled "Request for Pre-Qualification Submittals from Design-Build Entities for the County of Alameda - Dublin Transit Center Parking Garage Project, dated November 05, 2020, and any amendments, modifications or supplements thereto (the "Pre-Qualification Information"), are eligible to submit Proposals.
7. **RECEIPT OF PROPOSALS FROM DBES.** Sealed Proposals from selected DBEs must be submitted to the Office of the County identified in Paragraph 4.4. above, by the date and time set forth in Subparagraph 4.1.2 above.
8. **AWARD TO DBE THAT PRESENTS THE MOST ADVANTAGEOUS PROPOSAL.** If the Contract is to be awarded, the County will award the Contract to the qualifying DBE that submits the Proposal that is most advantageous to the County, as shown by receiving the highest combined scores on its Proposal.
 - 8.9 **The Design and Construction cost limit for the Base Project (Scope of work without any of the additive or deductive alternates) is \$29,000,000.** . The County reserves the right to deem non-responsive any Proposal with a proposed Contract Price greater than ~~\$30~~ **\$29,000,000**, as well as any Proposal that does not address and respond to all of the requirements of this Request for Proposals, including but not limited to conformance with the Bridging Documents.
 - 8.10 For a Proposal to be responsive, the DBE must, among other things, meet all Pass/Fail requirements.
 - 8.11 The DBE that submits the responsive Proposal deemed to provide the best value to the County as shown by the highest combined score achieved on its Pre-qualification and its Proposal will be recommended to receive the award of the Contract, if the County awards a Contract.
9. **REQUIRED PROPOSAL SECURITY.**
 - 9.1 DBEs must submit with their Proposal a certified check or cashier's check from a responsible bank in the United States, or a corporate surety bond furnished by a surety authorized to do surety business in the State of California, having an A.M. Best

Company financial rating of A-7 or better, of not less than ten percent (10%) of the DBE's Proposal amount, payable to "County of Alameda". The required form of corporate surety bond is Document 00 61 13 (Bond Accompanying Proposal). County will reject as non-responsive any Proposal submitted without the required Proposal security. County may elect to retain the Proposal securities and Proposal bonds of the DBEs until the later of (a) one hundred twenty (120) Days after Proposal opening or (b) the execution of the Contract and deposit of all necessary bonds and other items, at which time the County shall return Proposal securities and Proposal bonds to the DBEs that are not selected for award of the Contract.

- 9.2 If the DBE to whom the Contract is awarded fails to comply with the requirements of Article 27 (Post-Notice of Award Requirements), County may, in its sole discretion, deposit the DBE's surety bond, cashier's check, or certified check for collection and retain the proceeds as liquidated damages for DBE's failure to enter into the Contract. By submitting a Proposal, DBE agrees that calculating the damages County may suffer as a result of the selected DBE's failure to execute and deliver all required Contract Documents and other required documents would be extremely difficult and impractical and that the amount of the DBE's required Proposal security shall be the agreed and presumed amount of County's damages for such a failure by DBE.

10. PROPOSAL-RELATED CONFERENCES.

- 10.1 Mandatory Pre- Proposal Conferences. County will conduct one mandatory Pre-Proposal Conference. Due to Covid 19 restrictions, this conference will be conducted via MS Team. A representative from the General Contractor and Lead Architect members of each DBE must be present at each Pre- Proposal Conference. Other members of the DBE's team may attend. The proposed time and location listed below are subject to change. An MS Team Invitation and log in information will be sent to the Proposal Managers identified by each of the Pre-qualified DBE's six days before the Conference date.

10.1.1 Pre-Proposal Conference: August 11, 2021

- 10.2 Additional Pre-Proposal Conferences. Additional meetings following the Pre-Proposal Conferences and Site Visits and prior to the submission of Proposals may be scheduled by the County as required. Addenda will be issued as the County deems necessary to address clarifications or comments resulting from Additional Pre- Proposal Conferences.

- 10.3 Addenda. In response to questions arising at the Pre-Proposal Conferences, the County will transmit to DBEs participating in any Addenda the County in its discretion considers necessary.

- 10.4 Minutes. County will issue Minutes of the Pre- Proposal Conferences and Site Visits, which shall constitute the sole and exclusive record and statement of the results of the Pre-Proposal Conferences and Site Visits. The minutes issued by County are not Contract Documents and do not change any of the requirements of this Request for Proposals.

- 10.5 Confidential Meetings. If all DBEs participating in the Proposal process agree, the County may hold confidential pre- Proposal meetings with each Bidder separately in order to facilitate each Bidder's independent understanding of the Bridging Documents and to facilitate each Bidder's development of a unique and competitive Proposal offering Best Value to the County. See Document 00 25 16 (Pre- Proposal Meeting Agreement and

Waiver of Claims).

11. **OTHER REQUIREMENTS PRIOR TO SUBMITTING PROPOSALS.** Submission of a Proposal signifies the DBEs careful examination of Request for Proposal Documents and complete understanding of the nature, extent, and location of the Work to be performed. DBEs must complete the tasks listed in Article 5 (Design Builder's Representations and Warranties) of Document 00 52 53 (Agreement) and submit Document 00 45 40.01 (Bidder Certifications) as a condition precedent to submitting a Proposal, and submission of a Proposal shall constitute the DBE's express representation to County that DBE has fully completed these tasks.
12. **RECEIPT AND EVALUATION OF PROPOSALS.**
 - 12.1 Except as provided for in Subparagraph 5.11.1 above, the County will retain the Proposals in strict confidence until completion of the County's evaluation of all Proposals and the completion of contract negotiations between the successful DBE and the County.
 - 12.2 DBEs who submit a complete, responsive Proposal will be required to give detailed technical presentations regarding the details of their Proposals to the County's Proposal review team on each Evaluation Factor listed in Paragraph 23.3 below. Following those presentations, the County will perform a detailed Proposal review. Based on that review, the County may elect to reject any Proposal which, in the County's sole discretion, fails to meet the requirements of the Request for Proposals.
 - 12.3 The County reserves the right to conduct negotiations with any or all of the DBEs that submit Proposals. Negotiations, if any, will be conducted in accordance with Document 00 25 19 (Rules and Procedures for Discussions and Negotiations).
 - 12.4 The County will determine at its sole discretion whether a Proposal is responsive and whether a DBE is responsible.
 - 12.5 The County will resolve any discrepancies between (a) the indicated sum of any column of figures and the correct sum of those figures in favor of the correct sum, and (b) written words and figures, or written words and numerals, in favor of the written words.
13. **CRITERIA FOR EVALUATING PROPOSALS.**
 - 13.1 The County will evaluate each Proposal based on two categories of "Factors," as described below.
 - 13.1.1 The first group of Factors, identified in Paragraph ~~23.2~~ 13.2 below, will be evaluated on a "Pass/Fail" basis, with a DBE needing to achieve "Pass" ratings for each Factor to be considered for award of Contract. Any DBE not achieving Pass ratings for all of the Factors identified in Paragraph ~~23.2~~ 13.2 below shall be deemed nonresponsive, the Proposal will not be reviewed further, and the DBE shall be ineligible for award of Contract.
 - 13.1.2 The second group of Factors, identified in Paragraph 23.3 below, will all be evaluated and scored on a "points" basis.
 - 13.1.3 Staff will recommend the qualifying DBE with the highest combined score for the ~~Pre-qualification and~~ Proposal ~~Phase Phases~~ to the County Board of Supervisors

for award of the Contract.

13.2 **“Pass/Fail” Factors:** The Factors to be evaluated on a “Pass / Fail” basis are as follows:

- 13.2.1 ~~Compliance with Cost Limit. The DBE must include a statement that the DBE will design and construct the Base Project (Scope of work without any of the additive or deductive alternates) in accordance with the Contract Documents for an amount not to exceed Thirty Million Dollars—\$30,000,000 (\$27,667,000 Construction Cost & \$2,333,000 Design Cost), as that amount may be adjusted following the award of the Contract in accordance with the Contract Documents.~~
- 13.2.2 Schedule Compliance. DBEs shall provide County with a Proposed Schedule in accordance with Document 01 32 26 (Schedules and Reports) showing a realistic plan to complete the Work within the time set forth in Document 00 52 53 (Agreement) and Section 01 12 16 (Work Sequence).
- 13.2.3 Conformance with Bridging Documents. The DBE must include a statement that the DBE will meet all requirements of the Bridging Documents.
- 13.2.4 Compliance with Outreach Programs (ECOP/SLEB/CTAP). The DBE must include a statement that the DBE will comply with the County’s Enhanced Construction Outreach Program (“ECOP”), Small Local Emerging Business Program (“SLEB”), and Contractor Technical Assistance Program (“CTAP”).
- 13.2.5 Acceptance of Fixed Contract Terms. The DBE must include a statement that the DBE accepts the contract provisions the County has designated as non-negotiable. The County will not accept any exceptions or modifications to the following documents or language:

Contract Document Reference	Title
Document 00 61 13.13 (Construction Performance Bond) and 00 61 13.16 (Construction Labor and Material Payment Bond)	Payment and Performance Bond forms
Documents 00 62 38 (ECOP), 00 62 40 (SLEB), and 00 62 20 (CTAP)	ECOP/SLEB/CTAP
Document 00 65 30 (Guaranty)	Warranty – 2 year period
Document 00 72 53, Paragraph 13.3 (General Conditions)	Indemnification
Document 01 26 00 (Contract Modification Procedures)	Compensation for Extended Overhead
Document 00 73 16 (Insurance)	Insurance Requirements
Document 00 73 49B (Project Stabilization/Community Benefits Agreement)	Project Stabilization Agreement

Document 01 81 22 (BIM Performance Requirements)	BIM Performance Requirements
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- 13.3 **Scored Factors for Evaluation.** In accordance with Public Contract Code Section 22161, the County will evaluate the following Factors in order to determine which DBE Proposal provides the Best Value to the County.

<u>No.</u>	<u>Evaluation Factor</u>	<u>Maximum Points</u>
1.	Contract Price	40
2.	Technical Design	20
3.	Life Cycle Cost	10
4.	Outreach	10
5.	Construction Expertise	15
6.	<u>Interview Presentation</u>	<u>5</u>
	Total	100

1. **Contract Price (40 Points).** The DBE that offers the lowest Contract Price that meets the requirements of the Contract Documents will receive 30 points. DBE with the second lowest offer of the Contract Price that meets the requirements of the Contract Documents will receive 20 points and the DBE with the third lowest offer of the Contract Price that meets the requirements of the Contract Documents will receive 10 points. DBE may offer a Contract Price up to \$2,000,000 lower than the cost limit, provided its Proposal meets all the requirements of the Bridging Documents and RFP. DBE shall receive 1 Point for each \$200,000 reduction from the cost limit of ~~\$30,000,000.~~ **\$29,000,000.** No fractional points will be awarded. DBE's competitive proposal price reduction, if any, must be stated in Document 00 42 53 (Proposal Form).
2. **Technical Design (20 Points).** DBE shall submit a Technical Design Proposal for the six elements specified below. The response to each element shall affirm the DBE's compliance to the Bridging Documents. DBE may include in its Technical Design Proposal specific elements wherein the DBE believes that its proposal will enhance the Project in excess of the minimum requirements of the Bridging Documents. Technical Design Proposals may address items including, but not limited to, sustainability and green building, quality and performance of materials, equipment and systems, and warranties/guarantees. These Technical Design Proposals must conform to all applicable codes and regulatory requirements, and shall not alter other requirements of Request for Proposals unless specifically approved by the County in writing.

The Technical Design Proposal shall provide a thorough description of the quantity, quality and methods proposed. DBEs should consider maintenance and user requirements in making Technical Design Proposals. The County will make any final determination as to the appropriateness of Technical Design Proposals, including those that will be authorized to be incorporated into the Work.

Technical Design Proposals are to be straightforward, clear, concise and specific to the information requested; they are to contain only material directly related to response requirements, not general marketing material. Excessive material will be viewed unfavorably.

- a. **Architectural Design Enhancements - (5 points).** The architectural treatment of the building facade at Campus drive as depicted with a metal screen on the Bridging Documents can be enhanced to create an attractive street frontage and a much larger public statement along Campus drive. The metal screen on the opposite side of the building facing a future multi story residential building must mitigate the light and noise from the parked cars as they move perpendicular to the metal screen. Provide a solution that addresses these requirements and blends the overall building architecture with the current design while meeting the overall cost factors established in the contract documents. Provide drawings and diagrams which describe in detail your solutions to the design elements submitted under the Technical Design Submittal. These drawings and diagrams shall provide detail sufficient to illustrate deviation from the Bridging Documents, if any, in similar detail to that shown in the Bridging Documents.
 - b. **Sustainable Design (5 points).** The DBE is required to deliver a Project that meets the Parksmart Gold Certification requirements as outlined in Section 01 81 13 (Sustainable Design Requirements) by the United States Green Building Council, and that responds to the Sustainable Design approach and requirements described in the Bridging Documents. Provide a two-page description of the Sustainability Approach to the Project, including a plan to achieve Parksmart Gold Certification. A narrative and/or diagrams are acceptable methods of communicating the description.
 - c. **Site Design (5 points).** The County included a Site civil and utility Construction Document Package in this RFP is to accelerate the start of construction outside the Design/Build parking deck footprint and complete as much of the on-site and off-site civil and utility construction work prior to the start of parking structure construction and provide a pad-ready site. Provide a concise description of the proposed solution and plan for accelerating the start of construction and site improvements. Describe how the Design team will take ownership of the completed Construction Documents and obtain the final required permits to start construction before April of 2022. A narrative and/or diagrams are acceptable methods of communication.
 - d. **Structural Design & Structural Integration (5 points).**
Problem Statement-1: Given all other Structural & Architectural Design requirements, (i.e.: The need for longer spans and column free-zones as well as 15'-00 clearance required at ground level due to future convertibility requirements) are there any cost and/or time benefits by using a different structural system in lieu of the current selected cast-in-place CIP frame with a post-tensioned slab. ~~Such as: Mild reinforced system; an all precast system; a mix of CIP and precast; and a mild reinforced systems? Please provide your analysis and qualify any such benefits.~~
Problem Statement-2: How can the Project comply with low-carbon concrete standards as developed by the Bay Area Low Carbon Concrete Codes and as specified in the contract documents but reduce any cost impact and manage the design and implementation of this requirement? Provide a concise description of your proposed concept and the structural framing and foundation system for Problem Statement #1. A narrative and/or diagrams are acceptable methods of communication.
3. **Life Cycle Cost Over 15 Years (10 points).** Each DBE shall describe how its proposed design and scope contributes to enhanced life cycle cost. The elements of enhanced life cycle cost shall be as follows:

- a. **Building Materials (5 points):** A description of elements in the DBE's Proposal which contribute to increased durability, ease of maintenance, minimized replacement cost, and decreased life cycle cost of building materials. Include all exterior and interior building materials.
- b. **Sustainable Design/Life Cycle Costing (10.5 points):** At least fifteen (15) year life cycle analysis using the Federal Energy Management (FEMP) Program's Building Life Cycle Cost Program Model BLCC 5.3-08 as applicable.

The analysis of alternative building and building-related systems or components for sustainable Design/Life Cycle Costing will be relative to the base building designed to be in conformance with ASHRAE standards, or applicable codes.

4. **Outreach (10 points).** Each DBE shall submit a Subconsultant/Subcontractor Procurement Plan satisfying all requirements of Document 00 62 30 (Subconsultant/Subcontractor Procurement) and showing how the DBE will comply with the County Outreach Programs. Include in separate sections:
 - a. Enhanced Construction Outreach Program (ECOP) compliance in accordance with Document 00 62 38 (Enhanced Construction Outreach Program).
 - b. Small Local Emerging Businesses (SLEB) Program compliance in accordance with Document 00 62 40 (Small Local Emerging Businesses Program).
 - c. Contractor Technical Assistance Program (CTAP) compliance in accordance with Document 00 62 20 (Contractor Bonding Assistance Program).
5. **Construction Expertise (15 points).** Each DBE shall provide a Design and Construction Management Plan describing its approach to the management of the Project with particular attention to the items listed below:
 - a. Project Team organization showing management responsibilities (and levels of authority) for the design and construction phases.
 - b. Project Schedule, including the review and approval of milestones during the Start-Up, Design Completion, Construction, Commissioning and Project Close-Out phases.
 - c. Design Management Approach (including design reviews, value engineering, and interaction with City of Dublin, Regulatory Agencies, Utility Companies, etc.
 - d. Electronic Communications (including software, web-based management tools, etc.).
 - e. Meetings and Conferences.
 - f. Site Requirements/Site Use, including plan to mitigate impact to surrounding neighbors.
 - g. Sustainability/Recycling/Waste Management.
 - h. Construction Traffic Management Plan.
 - i. Site Staging and Logistics Plan.
 - j. Approach to conflict resolution.
 - k. Quality Control and Quality Assurance program.
 - l. Community Outreach strategy.
 - m. Monthly Reports.
 - n. Record Documents.

6. **Interview Presentation (5 points).** Following the County's technical review of each

Proposal, DBE will be invited to present their Proposals to the County. During that Interview Presentation, the County may, at its discretion, award up to five (5) points based on its determination that a Proposal will provide the Best Value to the County for the design and construction of the Project.

14. **EXCEPTIONS TO CONTRACT DOCUMENTS AND LIST OF ASSUMPTIONS.** Each DBE will provide a letter containing a complete statement of all exceptions, if any, to the commercial terms in Division 00 and 01 of the Contract Documents and all material assumptions underlying the DBE's response to this Request for Proposals. Exceptions will be considered during those negotiations, if any, conducted in accordance with Document 00 25 19 (Rules and Procedures for Discussions and Negotiations). No exception may be taken to the Fixed Contract Terms listed in Subparagraph 12.2.5, above, or to the Bridging Documents.
15. **NOTICE OF INTENT TO AWARD; PROPOSAL PROTEST.** If County issues Document 00 51 00.01 (Notice of Intent to Award), the County will use reasonable effort to deliver by electronic mail a copy thereof to all DBEs who submitted satisfactory Proposals no later than the first Business Day after issuance, although any delay or failure to do so will not extend the protest deadline, set forth in Subparagraph 5.13.3, above.
16. **ANNOUNCEMENT OF AWARD.** If any award is made, County shall publicly announce the award of the Contract by issuing Document 00 51 00 (Notice of Award), by posting the same in the Office of the County, and by mailing a copy of Document 00 51 00 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 DBE to whom the award was made; (2) a written statement supporting the Contract award which states the basis of the award; and (3) the County's second and third ranked DBEs.
17. **POST-NOTICE OF AWARD REQUIREMENTS.** After issuance of Document 00 51 00 (Notice of Award), the successful DBE must submit the following documents to County by 5:00 p.m. of the seventh (7th) Day following DBEs receipt of Document 00 51 00. Execution of the Contract depends upon receipt and approval of these documents:
 - 17.1 Document 00 52 53 (Agreement): To be executed by the successful DBE. Submit three (3) copies, each bearing all required original signatures.
 - 17.2 Document 00 61 13.13 (Construction Performance Bond): To be executed by the successful DBE and its surety, in the form set forth in Document 00 61 13.13.
 - 17.3 Document 00 61 13.16 (Construction Labor and Material Payment Bond): To be executed by the successful DBE and its surety, in the form set forth in Document 00 61 13.16.
 - 17.4 Document 00 65 30 (Guaranty): To be executed by the successful DBE, in the form set forth in Document 00 65 30.
 - 17.5 Insurance forms, documents, certificates and endorsements required by Document 00 73 16 (Insurance)
 - 17.6 Any other item specified in Document 00 51 00 (Notice of Award).
 - 17.7 County shall have the right to confirm the Construction Performance Bond,

Construction Labor and Material Payment Bond, by communicating directly with the performance bond and payment bond surety proposed by the successful DBE. DBE's surety must be satisfactory to County. Corporate sureties on these bonds and on bonds accompanying Proposals must be duly licensed to do business in the State of California and must have an A.M. Best Company financial strength rating of A- (Excellent) and a Class VII or better Financial Size Category rating.

END OF DOCUMENT

**DOCUMENT 00 42 53
PROPOSAL FORM**

To: HONORABLE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA

Re: **PROJECT NO. 18124 DESIGN/BUILD SERVICES FOR THE ALAMEDA COUNTY
DUBLIN TRANSIT CENTER PARKING GARAGE PROJECT**

1. The undersigned Bidder, _____, proposes and agrees that, if this Proposal is accepted, Bidder will enter into an agreement with the COUNTY OF ALAMEDA, acting by and through its GENERAL SERVICES AGENCY ("County") in the form included in the Contract Documents and Document 00 52 53 (Agreement), to perform and furnish all Work specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Proposal and in accordance with all other terms and conditions of the Contract Documents.
2. The Bidder accepts all of the terms and conditions of the Contract Documents. The Bidder accepts all of the terms and conditions of Document 00 11 19 (Request for Proposals from Design Build Entities) and all Addenda thereto, including without limitation, those dealing with the disposition of Proposal security. This Proposal will remain subject to acceptance **for ninety (90) Days after the Date of Bidder's submittal of its Proposal**, unless a greater period is authorized by Document 00 11 19, and may not be withdrawn during that time period. The Bidder will sign and submit the Agreement, bond commitments and other documents required by Document 00 11 19 by the time and in the manner set forth therein.
3. In submitting this Proposal Form, the Bidder represents that:
 - 3.1 Bidder has examined all of the Contract Documents, and
 - 3.2 Based on that examination, Bidder proposes and agrees to fully perform the Work within the time stated and in strict accordance with the Contract Documents for the following sum of money listed in the following Schedule of Proposal Prices.
4. Bidder must provide the following price breakdown information for proposal evaluation purposes. Price categories are based on the Level 2 National Institute of Standards and Technology Uniformat II Classification System and Bidder is to allocate cost based on this system. The amounts included in the following breakdown must accurately reflect the Bidders estimated costs and shall not exceed the total price identified in Document 00 11 19, Paragraph 13.2.1. This information is for proposal evaluation purposes and will not be used as a schedule of values. The "Total Design Services" amount listed below shall be used to determine the Bidder's Small, Local Emerging Business (SLEB) Program (Document 00 62 40) participation requirements. The "Construction Total" amount listed below shall be used to establish the penal sum for the Construction Performance Bond (Document 00 61 13.13) and determine the Bidder's goals in the Enhanced Construction Outreach Program (Document 00 62 38).

All proposal items must be filled in completely. Proposal items are described in Sections 01 11 02 (Summary of Work) and 01 11 20 (Design Services and Deliverables). The price breakdown information included in this Document is intended for proposal evaluation and does not reflect the work sequencing requirements described in Section 01 12 16 (Work Sequence). Construction must be performed in

accordance with the requirements of Section 01 12 16. Quote in numerals only, unless words are specifically requested.

<u>Project Component</u>	<u>DESIGN SERVICES</u>	<u>SUBTOTAL (Figures)</u>	<u>TOTAL</u>
1.	<u>Building</u>		
	Design Development	\$ _____	
	Construction Documents	\$ _____	
	Construction Administration	\$ _____	
	Building Total		\$ _____
2.	<u>Sitework</u>		
	Design Services	\$----- _____	
	Construction Documents Coordination	\$----- _____	
	Construction Administration	\$----- _____	
	Sitework Total:		\$ _____
	TOTAL DESIGN SERVICES:		\$ _____

	<u>CONSTRUCTION</u>	<u>SUBTOTAL (Figures)</u>	<u>TOTAL</u>
3.	<u>BUILDING</u>		
	a. Foundations	\$ _____	
	b. Superstructure	\$ _____	
	c. Exterior Enclosure	\$ _____	
	d. Roofing	\$ _____	

e. Interior Construction	\$ _____	
f. Interior Finishes	\$ _____	
g. Conveying	\$ _____	
h. Plumbing	\$ _____	
i. HVAC	\$ _____	
j. Fire Protection	\$ _____	
k. Electrical	\$ _____	
l. Equipment	\$ _____	
m. Special Construction	\$ _____	
n. Site Preparation	\$ _____	
Off-Site Work : \$-----		
On-Site Work : \$-----		
o. Site Improvements	\$ _____	
Off-Site Work : \$-----		
On-Site Work : \$-----		
p. Site Electrical Utilities	\$ _____	
q. Other Site Construction	\$ _____	
r. General Requirements	\$ _____	
w1. Field General Conditions	\$ _____	
w2. Home Office Overhead	\$ _____	
w3. Bonds / Insurance	\$ _____	
w4. Fee	\$ _____	
BUILDING TOTAL		\$ _____
CONSTRUCTION TOTAL		\$ _____
DESIGN SERVICES TOTAL		\$ _____
TOTAL CONTRACT VALUE		\$ _____

TOTAL CONTRACT PRICE \$ _____

4- ALTERNATES

Add Alternate #1	Design:	\$-----
	Construction:	\$-----
Add Alternate #2	Design:	\$-----
	Construction:	\$-----
Add Alternate #3	Design:	\$-----
	Construction:	\$-----
Add Alternate #4	Design:	\$-----
	Construction:	\$-----
Add Alternate #5	Design	\$-----
	Construction:	\$-----
Add Deductive Alternate #6	Design	\$-----
	Construction	\$-----

The Alternates are for the purpose of the County identifying cost of work that can be funded separately or that can support value engineering effort. They shall include all phases of Design and Production of Drawings and all fees, bonds and insurances as well as General Requirements.

5. The undersigned understands that County reserves the right to reject this Proposal, or all proposals, in its sole discretion.
6. If written notice of the acceptance of this Proposal, referred to as Document 00 51 00 (Notice of Award), is mailed or delivered to the undersigned Bidder 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 11 19 (Request for Proposals from Design Build Entities) including, but not limited to, Documents 00 52 53 (Agreement), 00 61 13.13 (Construction Performance Bond), 00 61 13.16 (Construction Labor and Material Payment Bond), 00 65 30 (Guaranty), and 00 73 16 (Insurance) all within the time and in the manner specified in Document 00 11 19 and 00 51 00 (Notice of Award).

7. Notice of Award or request for additional information may be addressed to the undersigned Bidder at the electronic mail (e-mail) and regular mail address set forth below.
8. The undersigned Bidder 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 within the Contract Times specified in Document 00 52 53 (Agreement).
9. The undersigned Bidder 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 53 (Agreement).
10. Bidder is a duly licensed Contractor by the State of California, and with a Class B license having number:

_____.

Name of Bidder: _____

By: _____

Title: _____

NOTE: If the Bidder 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 Bidder 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 Bidder.

Business Address: _____

Telephone Number: _____

Electronic Mail Address: _____

Fax Number: _____

Date of Proposal: _____

END OF DOCUMENT

SECTION 00 72 53

GENERAL CONDITIONS

(Design-Build)

TABLE OF CONTENTS

1.	INVESTIGATIONS AND SUBCONTRACTORS	5
1.1	Investigation Required	5
1.2	Design Build Entity and Subcontractors and Subconsultants	7
2.	SCOPE OF DESIGN BUILD RESPONSIBILITY	10
2.1	Scope and Description of Work	10
2.2	Add Alternates.....	11
2.3	Add Alternate #1	11
2.4	Add Alternate #2	11
2.5	Add Alternate #3	11
2.6	Add Alternate #4	11
2.7	Add Alternate #5.....	11
2.8	Deductive Add Alternate #6.....	11
2.9	Bid alternates.....	11
2.10	All-Inclusive Design Build Obligation:.....	11
3.	CONTRACT AWARD AND COMMENCEMENT OF THE WORK	15
3.1	Commencement of Work	15
3.2	Mobilization	16
4.	BONDS AND INSURANCE	17
4.1	Bonds.....	17
4.2	Insurance	19
5.	INTERPRETATION OF AND COMPLIANCE WITH CONTRACT DOCUMENTS	19
5.1	Abbreviations and Definitions.....	19
5.2	Divisions.....	19
5.3	Intent.....	19
5.4	Order of Precedence	19
5.5	Conflicts Among Contract Document Provisions	20
5.6	Specifications and Drawings Do Not Control Division of Work.....	21
5.7	Interpretation of Contract Documents	21
5.8	Construction Documents	22
5.9	Necessary and Incidental Work.....	24
5.10	Design Deliverables, Shop Drawings and Submittals.....	25
6.	CONSTRUCTION BY THE COUNTY OR BY SEPARATE CONTRACTORS	27
6.1	The County's Right to Perform Construction and to Award Separate Contracts.....	28
6.2	Coordination and Cooperation	28

6.3	County Authority Over Coordination.....	29
7.	THE COUNTY AND PAYMENT	30
7.1	The County's Representatives.....	30
7.2	Means and Methods of Design and Construction.....	32
7.3	Receipt and Processing of Applications for Payment	32
7.4	Election re: Public Contract Code Section 22300	33
8.	CONTROL OF THE WORK	33
8.1	Supervision of Work by Design Build Entity.....	33
8.2	Observation of Work by County	34
8.3	Access to Site	34
8.4	Existing Utilities.....	34
8.5	Underground Facilities	36
9.	WARRANTY AND GUARANTEE; INSPECTION AND MAINTENANCE OF WORK	40
9.1	Warranty and Guarantee.....	40
9.2	Inspection of Work.....	42
9.3	Correction of Defective Work.....	45
9.4	Acceptance and Correction of Defective Work by the County	47
9.5	Rights Upon Inspection or Correction.....	49
9.6	Samples and Tests of Materials and Work.....	50
9.7	Proof of Compliance with Contract Provisions.....	50
9.8	Acceptance	51
9.9	Maintenance of Work.....	51
9.10	Maintenance During Warranty Period	51
10.	DESIGN BUILD ENTITY'S ORGANIZATION AND EQUIPMENT	51
10.1	Design Build Entity's Legal Address	51
10.2	Design Build Entity's Office at the Site	51
10.3	Design Build Entity's Superintendents or Forepersons.....	52
10.4	Proficiency in English	52
10.5	Design Build Entity's and Subcontractors' Employees	52
10.6	Design Build Entity to Supply Sufficient Workers and Materials	52
10.7	Design Build Entity's Use of the Site	53
11.	PROSECUTION AND PROGRESS OF THE WORK	54
11.1	Schedules and Examinations of Contract Documents.....	54
11.2	Lines and Grades, Measurements.....	56
11.3	Cost Data and Other Records	56
12.	CLAIMS BY DESIGN BUILD ENTITY	58
12.1	General	58
12.2	Subcontractor Claims	60
13.	LEGAL AND MISCELLANEOUS	61
13.1	Laws and Regulations	61
13.2	Permits And Taxes	62
13.3	Responsibility of Design Build Entity and Indemnification	63

13.4	Notice of Concealed or Unknown Conditions.....	65
13.5	Hazardous Waste or Materials Conditions	67
13.6	Suspension of Work	69
13.7	Force Majeure	69
13.8	Termination of Contract for Cause and Written Adequate Assurances of Performance	72
13.9	Termination of Contract for Convenience.....	75
13.10	Contingent Assignment of Subcontracts	80
13.11	Remedies and Contract Integration	81
13.12	Patents	82
13.13	Substitution for Patented and Specified Articles.....	82
13.14	Interest of Public Officers	83
13.15	Limit of Liability	83
13.16	Severability.....	83
13.17	Contract Documents and Exercise of Contract Responsibilities	83
13.18	Title to Work: No Liens	84
13.19	Proprietary or Confidential Information of County.....	84
13.20	Ownership of Results/Works for Hire.....	84
13.21	Compliance with Americans with Disabilities Act	86
13.22	Disputes.....	86
13.23	Statute of Limitations	87
13.24	Waivers.....	87
13.25	Beneficial Occupancy.....	87
13.26	Successors and Assigns	88
13.27	Correction of Errors and Omissions	89
13.28	Required Permits:	89
13.29	Compliance with EIR Mitigation Measures	90
13.30	Review of the Final Design/Build drawings	90
13.31	Changes to Project Plans.	90
13.32	Site work and Street Improvements:	90
13.33	Submittals.....	99
14.	MODIFICATIONS OF THE CONTRACT DOCUMENTS	105
14.1	Limitation on Change Orders	105
14.2	Alterations, Modifications and Force Account Work	105
14.3	Entire Agreement	107
14.4	Modifications	108
15.	CONTRACT TIMES	108
15.1	Time for Performance of Contract	108
15.2	Entitlement to Change of Contract Times	109
15.3	Weather Delays	110
15.4	Notice of Delay	111
15.5	No Damage for Design Build Entity Caused Delay	112
15.6	Time Extension Without Compensation	112
15.7	Compensable Delay.....	113
15.8	Liquidated Damages.....	113
16.	WORKING CONDITIONS AND PREVAILING WAGES	114

16.1	Use of Site/Sanitary Rules.....	114
16.2	Protection of Work, Persons and Property	115
16.3	Responsibility for Safety and Health.....	116
16.4	Emergencies	117
16.5	Use of Roadways and Walkways	117
16.6	Nondiscrimination	117
16.7	Prevailing Wages.....	118
16.8	Environmental Controls	119
16.9	Shoring Safety Plan	128

1. INVESTIGATIONS AND SUBCONTRACTORS

1.1 Investigation Required

1.1.1 Prior to submitting a Proposal for the contract to design and construct the Work and prior to proceeding with the design or construction, the Design Build Entity must do all things referred to in Document 00 52 53 (Agreement) regarding the Design Build Entity's representations and warranties contained in Article 5 thereof. The Design Build Entity is charged with all information and knowledge that a reasonable contractor would ascertain from having performed this required pre-Proposal review, research and analysis. The Contract Price must include the entire cost of all work "incidental" to completion of the Work, as that term is defined in Section 2.1 below (Description of Work) of this Document 00 72 53.

1.1.2 The conditions and limitations on Design Build Entity's use of information in the Project Manual are set forth in Document 00 31 32 (Geotechnical Data and Existing Conditions), and Document 00 31 26 (Hazardous Materials Surveys).

1.1.2.1 As to aboveground 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. The Design Build Entity is required to make an independent investigation and verify existing above-ground conditions. In proceeding with the Work, the 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 and (Geotechnical Data and Existing Conditions) and Document 00 31 26 (Hazardous Materials Surveys), the 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 to the

extent provided for in Document 00 31 32 (Geotechnical Data and Existing Conditions). The County is not responsible for any unreasonable opinions or conclusions drawn from such information. Compensation for unknown differing Site conditions shall be allowed as provided in the Contract Documents.

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; and

1.1.3.2 Physical Conditions: Those reports of physical conditions in or relating to existing surface or known subsurface structures at or contiguous to the Site that have been made available for informational purposes.

1.1.3.3 These reports and drawings are not Contract Documents but as provided in Documents 00 31 32 (Geotechnical Data and Existing Conditions), the Design Build Entity may use the information in these reports and drawings. However, the 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 Design-Build Entity shall perform whatever additional studies and investigations it deems appropriate and necessary for design and construction of the Project.

1.1.5 Except as described above, the Design Build Entity may not rely upon or make any claim against the County, or any of its consultants, with respect to the interpretation of such technical data. 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). The 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 contract award, the Design Build Entity shall conduct all necessary investigations and become familiar with any and all actual as-built conditions.

- 1.1.6 See Section 13.5 below (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 and Subconsultants

- 1.2.1 The Design Build Entity must list with its Proposal and provide required information for the major Subcontractors, subconsultants and specifically identified designers (together for purposes of this Document 00 72 53, "Subcontractors") who will perform a portion of Work, as far as such persons or entities are known on the day Proposals are submitted. The Design Build Entity shall submit updated Subcontractor Lists to the County as they become available following contract award or the Notice to Proceed. The Design Build Entity shall provide the following information:

- 1.2.1.1 Name of Subcontractor.
- 1.2.1.2 Business address of Subcontractor.
- 1.2.1.3 Telephone numbers and e-mail addresses of Subcontractor.
- 1.2.1.4 Brief description of portion of Work to be performed under subcontract.
- 1.2.1.5 Amount to be paid for Subcontractor's work, labor, or service.
- 1.2.1.6 The Subcontractor's California Contractor's State License Number or Professional License Numbers.

- 1.2.2 The Design Build Entity shall constantly give personal attention to faithful prosecution of Work, whether performed by the 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., the Design Build Entity shall not substitute any other person or firm as a

Subcontractor or subconsultant in place of any of those listed in 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 the Design Build Entity thereafter let out or subcontract any portion of the Work in violation of this requirement, County shall have the right to assess the Design Build Entity a penalty of ten percent (10%) of the amount of the subcontract involved. The 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.

- 1.2.4 The Design Build Entity shall provide the County with a copy of any bid qualification forms to be utilized in bid packages 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 bidders. The Design Build Entity and the County shall agree on a final form of the bid qualification forms. The Design Build Entity shall provide the County with all completed bid qualification forms submitted by each Subcontractor to which the Design Build Entity intends to award any subcontract. At the time the Design Build Entity provides the County with completed bid qualifications forms submitted by each Subcontractor to which the Design Build Entity intends to award any subcontract, the Design Build Entity shall advise the County in writing of the date by which the Design Build Entity intends to enter each subcontract with each Subcontractor. The County shall review the completed bid qualification forms submitted by each Subcontractor and, prior to the date by which the Design Build Entity intends to enter each subcontract with each Subcontractor, County shall advise the Design Build Entity in writing of its disapproval of any such Subcontractor(s). The Design Build Entity shall upon request provide the County with a copy of each contract which the 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, however, the County shall not have a duty to exercise this discretion for the benefit of any party other than itself.
- 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, the Design Build Entity shall require the Subcontractor's written agreement (1) to be bound to the terms of

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 Work; and (3) to assume vis-à-vis the Design Build Entity all the obligations and responsibilities that the Design Build Entity assumes toward the County under the Contract Documents. The County shall be a designated intended third party beneficiary of all subcontracts.

- 1.2.6 The 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. The 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 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 this Contract or any part thereof shall relieve the Design Build Entity or Sureties of liabilities or obligations under this Contract.
- 1.2.9 No assignment by the Design Build Entity of the Contract or any part thereof, or funds to be received there under by the 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 The Design Build Entity shall require each of its Subcontractors to execute agreements containing indemnity provisions coextensive with those in this Contract.
- 1.2.11 The County has the right to request all documentation that supports the 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, however, the County has no obligation to exercise this discretion for the benefit of any party other than itself.

1.2.12 The County reserves the right to issue payments to the Design Build Entity and Subcontractor jointly for Work performed under this Agreement.

1.2.13 No contractor or Subcontractor who is ineligible to bid work on, or be awarded, a public works project under Labor Code sections 1771.1 can bid on, be awarded or perform work as a Subcontractor on the Project. The Design Build Entity is prohibited from performing work on the Project with a Subcontractor who is ineligible to perform work on a public works project under these sections of the Labor Code.

2. SCOPE OF DESIGN BUILD RESPONSIBILITY

2.1 Scope and Description of Work

The Design Build Entity is responsible for the complete scope of work described in the Contract Documents including the Project Manual and the Bridging Documents. The Bridging documents include the schematic design and performance design criteria for parking structure including the architectural, landscape, structural and mechanical systems. Also included are On-site and Off-site Civil Construction documents for the site work. The bridging documents for the Parking Structure have been developed with the intent to sufficiently define the project design requirements and develop a detailed estimate of the Project cost, so a building redesign should not be required. The approach has been to provide the County with what it wants and expects, while allowing the Design Build Entity to use their combined creative talents to efficiently complete the design and construct the project.

The objective for the further development of the On-Site and Off-site Civil Construction Document Package has been to expedite and complete the City of Dublin Land Development and Right of Way review and permit requirements in order to accelerate the start of construction outside the Parking Structure footprint. The Design Build Entity is required to review "On-site and Off-site Construction Documents" and propose any necessary changes to these documents in order to take full ownership of the design responsibility. The Design Built Entity will be required to provide the signature and seal of a licensed engineer as necessary for the Engineer of Record for the "On-site and Off-site Construction Documents and for compliance with all Legal Requirements.

The Design Build Entity shall deliver the Work to the County as a complete, operational, and fully functional portion of the Project. in accordance with the Contract Documents including providing, furnishing, and performing all Services and providing and furnishing all necessary supplies, Materials and Equipment, and all necessary supervision, labor, and Services required for the engineering, architectural design, procurement, quality assurance and inspection, construction, installation, Startup, Checkout, Commissioning, Testing, Maintenance, site cleanup, and the 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. Design Build Entity will pay all fees associated with any such connection except as is provided in paragraph 13.2.1 below of this Document 00 72 53. The signature and seal of a licensed engineer or architect shall be obtained as necessary for compliance with the Legal Requirements.

- 2.2 Add Alternates: This project includes the bid alternates as follows:
- 2.3 Add Alternate #1: Addition of a photovoltaic roof top array, support steel structure, and related electrical infrastructure. The project has been designed to allow the simultaneous selection of this alternate with the base scope or deferred selection / construction of this alternate in the future. Please note that certain steel upright supports and embed plates will be part of the base scope of work and need to be designed and fabricated as the base support and remain in place to support certain cornice/canopy elements.
- 2.4 Add Alternate #2: Use of low carbon concrete as part of the overall superstructure.
- 2.5 Add Alternate #3: Decorative Glazing artwork as specified by Section 00 73 73 – Public Art Program and section 08 – 8130: - Decorative Glazing.
- 2.6 ~~Add Alternate #4: All Electrical Vehicle charging equipment including the required infrastructure and signage.~~ Parking system and monitoring for entry and exit as outlined in the Basis of Design not including the infrastructure.
- 2.7 Add Alternate #5: Requirements associated with the Parksmart Gold certification.
- 2.8 ~~Deductive Add Alternate #6: Using an all precast vertical structural system in lieu of the current selected cast in place CIP frame with a post tensioned slab.~~ This Alternate will change the base scope for the elevators to two elevators (1 per core) with an Add Alternate for two additional elevators (4 total, or 2 per core). Each additional elevator must be individually priced to allow the County to choose either one or two elevators.
- 2.9 Bid alternates should be separately priced and indicated is delineated in Document 00 42 53 Proposal Form.
- 2.10 All-Inclusive Design Build Obligation:

Without limiting the generality of Section 2.1 above (Description of Work) hereof, the Design Build Entity shall provide, at a minimum, the following Services and Materials and Equipment as further specified and described in Sections 01 11 13 (Work Covered by Contract Documents) and 01 11 20 (Design Services and Deliverables) provide, however, these sections shall not be construed in any way to limit the Design Build Entity's obligations hereunder to deliver the Work to the County as a complete, operational, and fully functional portion of the Project.

- 2.10.1 The Design Build Entity shall provide and manage all architectural and engineering services and design, which will set forth in detail specifications, drawings and requirements for the procurement of the Materials and Equipment and for the construction of the entire Work. The 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.
- 2.10.2 The Design Build Entity shall provide all equipment and materials and furnish the services of all supervisors, buyers, inspectors, expeditors, and other personnel necessary to procure all Materials and Equipment for the construction of the Project. The 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 and off the Site), customs clearance, quality assurance, and other facilities and services (including any temporary or consumable materials, water, fuels, and electricity necessary for the proper execution and completion of the Work, including any of the utilities, as required). Up to the time of Final Completion, as defined in Section 01 42 16 (Definitions), the 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 the Design Build Entity. Should the Design Build Entity cause damage to public or private roadways in its performance of the Work, the Design Build Entity shall make repairs as necessary without cost to the County.
- 2.10.3 The 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 Services in accordance with the Contract Documents. At the County's request, the Design Build Entity shall replace, at the 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. Whenever required by Applicable Laws or the Contract Documents, the Design Build Entity shall employ licensed personnel as necessary to perform engineering, design, architectural, or other professional services in the performance of the Work.
- 2.10.4 All such professional services shall be performed with the degree of care, skill, and responsibility customary among such licensed personnel that specialize in public works similar in size, scope and complexity to the Work and the Project. The 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. The Design Build Entity shall adopt and implement reasonable policies and practices, including but not limited to those in the Project Labor Agreement or Project Stabilization Agreement, if any, designed to avoid work stoppage, slow downs, disputes and strikes.

- 2.10.5 The Design Build Entity shall be 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 the Design Build Entity, any Subcontractor, supplier, or any of their employees or agents performing any of the Work or the Design Build Entity's warranty obligations. The Design Build Entity shall prosecute the Work continuously and diligently and complete the Work in accordance with all requirements of this Agreement.
- 2.10.6 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.
- 2.10.7 Design Build Entity shall be responsible for the layout of the Work and shall perform all necessary surveying during the construction of the Project. The accuracy of all grades, elevations, alignments, and plumbing of any structures and the location of all Facilities described in the final plans and specifications shall be the responsibility of the Design Build Entity. The Design Build Entity shall preserve all permanent survey construction monuments and benchmarks. Prior to Final Completion, the Design Build Entity shall prepare Record Documents to accurately show 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 utility facilities) and shall show all related easements, improvement, utilities and rights of way above and below ground, on and off the Site, as of the date of delivery of such documents. Such documents shall also show the dimensions and the distances to the nearest benchmarks.
- 2.10.8 The 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, Commissioning and Testing. The Design Build Entity shall be responsible for Startup, Commissioning and Testing of the Project and shall carry out those activities in accordance with all applicable codes and Legal Requirements, Startup, Checkout and Commissioning

requirements and procedures as set forth in the Contract Documents.

- 2.10.9 Prior to establishment of on-site office facilities, the Design Build Entity shall provide, upon request of the County, reasonable temporary facilities at the Design Build Entity's off-site offices to allow the County to review, inspect, and evaluate the Work in accordance with the Contract Documents.
- 2.10.10 Except for safety and warning signs, the Design Build Entity shall not install any signs on the Site without the express written consent of the County.
- 2.10.11 The Design Build Entity shall be responsible for all Site security until Final Completion, as defined in Section 01 42 16 (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 full nature and extent of Site security measures shall be determined by the Design Build Entity. Design Build Entity is solely responsible for means and methods to provide adequate and appropriate Site security. After responsibility for Site security is transferred to the County, Design Build Entity will be subject to the County's Site security regulations and restrictions.
- 2.10.12 The 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.
- 2.10.13 The 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, the Design Build Entity shall give the County at least three (3) Days advance notice of any system or equipment Checkout, Commissioning or Testing activities. If the County desires access to any places where Work is being performed or from which Materials and Equipment are being obtained, the 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. The 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, Commissioning and Testing.

- 2.10.14 As part of the procurement of equipment, the Design Build Entity shall provide to 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.
- 2.10.15 When any equipment or portion of the Work is damaged, the 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. Design Build Entity shall give all required notices and provide all assistance and documentation as needed to seek compensation through any applicable insurance policies.
- 2.10.16 The Design Build Entity shall provide to the County all tests and measurements, laboratory analyses, and reports made or prepared in connection with the Work.
- 2.10.17 The Design Build Entity agrees that, in light of the high degree of confidence and trust that the County has reposed in the Design Build Entity: the 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 this Agreement.
- 2.10.18 The Design Build Entity agrees that it has single point responsibility for the design and construction of the Work, and agrees to utilize the highest standard of excellent design, engineering and construction practices. If the Design Build Entity performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission without notifying and obtaining the written consent of the County, the Design Build Entity shall be responsible for the resultant Losses, including, without limitation, the costs of correcting Defective Work.
- 2.10.19 The standard of care for all professional design services Design Build Entity performs to execute the Work shall be that of the care and skill ordinarily used by members of the design profession with experience in the design and construction of landmark civic structures similar to the Project in size and complexity, and practicing under similar conditions at the same time and locality of the Project.

3. CONTRACT AWARD AND COMMENCEMENT OF THE WORK

3.1 Commencement of Work

- 3.1.1 The Contract Times 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 53 (Agreement), however, the

Design Build Entity shall deliver to County the executed agreements, forms, bonds, and insurance documents required by Document 00 11 19 (Request for Proposals from Design-Build Entities) 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 53. See also Article 15 below (Contract Times) of this Document 00 72 53.

- 3.1.2 The Design Build Entity shall start to perform the Work on the date when the Contract Times commence to run; no work shall be done at the Site prior to the date on which the Contract Times commence to run.

3.2 Mobilization

- 3.2.1 Mobilization shall include 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 the 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 the Design Build Entity with all specified furnishings and utility services including telephones. The Design-Builder may locate its field office trailers at location as determined by the DBE and approved by the County.
- 3.2.1.6 Providing connections to onsite 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 the 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, the Design Build Entity shall submit to the County, for its review and concurrence, a mobilization plan and schedule.
 - 3.2.2.1 The mobilization plan and schedule shall be 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 and schedule shall be developed in both narrative and graphic format, and shall include, at a minimum, the following:
 - 3.2.2.2.1 A mobilization plan and schedule for 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.
 - 3.2.2.2.2 A detailed sequential plan for commencement of construction consistent with the scheduling requirements of this Contract for all design, 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 11 19 (Request for Proposals from Design-Build Entities), the Design Build Entity must provide to the County the following bonds for all phases of the Work, as described in Section 01 12 16 (Work

Sequence). Design Build Entity shall provide two (2) bonds pursuant to subparagraph 4.1.1.1 and 4.1.1.2:

- 4.1.1.1 Provide one (1) corporate surety bond in the form and amount specified in Document 00 61 13.13 (Construction Performance Bond) to guarantee faithful performance of all construction work, including bonds, insurance, permits and fees under the Contract ("Performance Bond"). This Performance Bond must have an initial sum not less than one hundred percent (100%) of the amount of the value of non-design Work. The Performance Bond shall obligate the surety to faithfully perform not less than one hundred percent (100%) of the amount of the value of non-design Work.
 - 4.1.1.2 Provide one (1) corporate surety bond in the form and amount specified in Document 00 61 13.16 (Construction Labor and Material Payment Bond) to guarantee payment of wages for services engaged and of bills contracted for services, materials, supplies, and equipment used in performance of the Contract for the Work ("Labor and Material Bond"). In accordance with Civil Code § 9554, this Construction Labor and Material Payment Bond shall obligate a surety to guarantee payment in an amount equal to the entire Contract Price for the Project.
- 4.1.2 Corporate sureties on these bonds and on bonds accompanying Bids must be duly licensed and legally authorized to engage in the business of furnishing surety bonds 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 In the event of increases in the Contract Price by Change Orders, or otherwise, aggregating to ten percent (10%) of the Contract Price or more, and by all such subsequent increases in the Contract Price thereafter, the Design Build Entity shall submit to the County evidence of additional bond coverage for such increases in the Contract Price. The Design Build Entity shall be compensated for such additional bond coverage as part of the

markups provided in 01 26 00 (Contract Modification Procedures).

4.2 Insurance

- 4.2.1 Within the time period specified in Document 00 11 19 (Request for Proposals from Design-Build Entities) and in Document 00 51 00 (Notice of Award), the Design Build Entity must provide to the County the evidence of insurance and other materials and information required in Document 00 73 16 (Insurance).

5. INTERPRETATION OF AND COMPLIANCE WITH CONTRACT DOCUMENTS

- 5.1 All abbreviations and definitions of terms used and not otherwise defined in this Document 00 72 53 are set forth in Section 01 42 00 (References).

- 5.2 This Document 00 72 53 subdivides at first level into Articles, at the second level into Sections, and then into paragraphs, and then into subparagraphs.

5.3 Intent

- 5.3.1 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. Each of the Contract Documents is an essential part of the Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are those documents listed in Section 7 of the Agreement Form (Document 00 52 53), including all exhibits thereto. Any Work, materials or equipment that may reasonably be inferred from the requirements of the Contract Documents, Applicable Laws, 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 that 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.

5.4 Order of Precedence

Except as provided in Section 5.5 below, in the event of any conflict among the Contract Documents, the order of precedence, from highest to lowest, shall be as set forth below:

- 5.4.1 Amendments, Change Orders or other modifications to the Contract Documents, as executed by the County in accordance with the requirements of the Contract Documents.
- 5.4.2 Contract Requirements:
 - 5.4.2.1 Division 00 (Alameda County Document) as listed in the Table of Contents.
 - 5.4.2.2 Division 01 (Alameda County Document) as listed in the Table of Contents.
- 5.4.3 Request for Proposals from Design-Build Entities (dated July 30, 2021) and including all addenda, attachments and appendices).
- 5.4.4 Bridging Documents:
- 5.4.5 Design Build Entity's Proposal, dated _____, as modified and accepted by County.
- 5.4.6 Request for Prequalification Submittals from Design Build Entities, dated November 5, 2020, including all addenda,
- 5.4.7 Design Build Entity's Prequalification Submittal package, including all addenda, attachments and appendices.
- 5.4.8 Written numbers over figures, unless obviously incorrect.
- 5.4.9 Figured dimensions over scaled dimensions.
- 5.4.10 Large-scale Drawings over small-scale Drawings.
- 5.4.11 Any conflict between the Contract Documents 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.
- 5.4.12 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, date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.

5.5 Conflicts Among Contract Document Provisions

- 5.5.1 Notwithstanding the order of precedence among Contract Documents set forth in this Article 5, in the event of any conflict, ambiguity or inconsistency between or among any of the

provisions in this Contract, or between provisions in this Contract and any other Contract Document, the provisions that establish the higher quality, manner or method of performing the Work, exceed good industry practice or use more stringent standards will prevail. If Design Build Entity's Proposal includes statements, terms, concepts or designs that can reasonably be interpreted as offering to provide higher quality items than otherwise required the Contract Documents or to perform services or meet standards in addition to or better than those otherwise required, then Design-Build Entity's obligations hereunder shall include compliance with all such statements, terms, concepts and designs. Additional details in a lower priority Contract Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority Contract Document.

5.6 Specifications and Drawings Do Not Control Division of Work

- 5.6.1 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.

5.7 Interpretation of Contract Documents

- 5.7.1 Should any discrepancy or ambiguity appear or any misunderstanding arise as to the meaning of anything contained in the Contract Documents, Design Build Entity or County may issue a Request for Clarification (RFC). See also Section 01 26 00 (Contract Modification Procedures).
- 5.7.2 If Design Build Entity discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Applicable Law or of any standard, specification, manual, or code, Design Build Entity shall at once issue a Request for Clarification (RFC). Design Build Entity shall not proceed with the Work affected by an RFC (except in an emergency) until a response, Clarification, Field Order, or Change Order has been issued. RFC's shall be submitted to the County only from the Design Build Entity, and not from any Subcontractor, Subconsultant or supplier. Before submitting any RFC Design Build Entity shall determine that the information requested is not clearly provided in the Contract Documents.
- 5.7.3 The party to whom the RFC is directed shall respond with reasonable promptness so as not to delay the Work and issue such written clarifications or interpretations of the requirements, which shall be consistent with the intent of and reasonably inferable from the Contract Documents.

- 5.7.4 It is the intent of the Contract Documents that the Design Build Entity shall have responsibility to provide a complete and comprehensive design (and construction thereof) for the Project in accordance with the Contract Documents. The County's review of the Design Build Entity's designs, shop drawings, samples and submittals shall not relieve the Design Build Entity of its responsibility for a complete design complying with 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 the Design Build Entity, consistent with these Contract Documents.
- 5.7.5 The Contract 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.
- 5.7.6 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.

5.8 Construction Documents

- 5.8.1 Upon receipt of the Notice to Proceed, the 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 shall at all times conform to the requirements of the Contract Documents. The Construction Documents 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 of the Project, other than such details customarily developed by others during construction and shall provide sufficient information for County to determine whether the Construction Documents meet

the design requirements of the Contract Documents and will result in a Project that meets the County's needs and expectations as set forth in the Contract Documents. The County's review of the Construction Documents shall be conducted in accordance with the approved Contract Schedule and with the procedures set forth in the Contract Documents. Such review shall not relieve the 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 the 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 by the Design Build Entity and expressly approved by the County in writing.

- 5.8.2 It is acknowledged by the parties hereto that inherent in a design build concept, bridging or otherwise, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design Build Entity will limit the Construction Document packages for construction to a reasonable number to be submitted for review and approval in writing by the County. The Contract Schedule shall indicate the times for the County to review each such portion of the Construction Documents and a reasonable time for review of same.
- 5.8.3 The Design Build Entity shall submit completed packages of the Construction Documents for review by the County, the California State Fire Marshal, and Other Authorities Having Jurisdiction at the times indicated on the Contract Schedule and as defined in the Scheduling Specification. Review meetings between the Design Build Entity and the County to review the Construction Document packages shall be scheduled and held so as not to delay the Work. After reviewing the Construction Documents packages for conformance to the Contract Documents, the County will issue a Construction Notice to Proceed to the Design Build Entity.
- 5.8.4 The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity to confirm compliance with Legal Requirements and shall be fully detailed when submitted to the County for review.
- 5.8.5 The Design Build Entity shall retain and pay expenses of a civil engineer or land surveyor to establish on the Site the required control points, including but not limited to benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish 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 the Design Build Entity's qualified personnel.

- 5.8.6 The Design Build Entity shall locate and protect 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.
- 5.8.7 The Design Build Entity shall verify the location and depth (elevation) of all Underground Facilities before performing any excavation Work.
- 5.8.8 Checking/Updating of Construction Documents. The Design Build Entity shall develop the final design and Construction Documents for the Work and, thereafter, during design and construction, shall continuously check the Construction Documents for conformance to actual conditions and update the Construction Documents to maintain complete and current as-built drawings as construction progresses.

5.9 Necessary and Incidental Work

- 5.9.1 The Design Build Entity shall perform reasonably implied parts of Work as “incidental work” although absent from the Contract Documents. Incidental Work includes any work not explicitly required by the Contract Documents that is normally or customarily required as a part of the Work. Incidental work shall be treated as if fully described in the Contract Documents, and the expense of incidental work shall be included in Proposal and Contract Price.

5.9.1.1 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 the Design Build Entity shall furnish materials or manufactured articles or shall do work for which no detailed or performance specifications are set forth, the following general specifications shall apply.

- 5.9.1.1.1 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 public facilities with functions similar to those of the Project.

5.9.1.1.2 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 Section 5.9. All such Work shall be consistent with the Contract Documents.

5.10 Design Deliverables, Shop Drawings and Submittals to be Furnished by Design Build Entity in Addition to Construction Documents

5.10.1 The Design Build Entity shall submit to the County for review a schedule of all deliverables required in Section 01 11 20 (Design Services 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 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 Section 01 11 20. 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 Section 01 11 20.

5.10.2 Due to the design-build nature of the Project, the Design Build Entity and the County will jointly develop a list of submittals and shop drawings which are to be submitted to the County. The 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 Documents or the final bid package for Subcontractor procurement, whichever is later. Design Build Entity will endeavor to provide updated partial Schedules of Submittals as available every thirty (30) Days through the course of the Project. Shop drawings and submittals shall be in addition to the Design Build Entity's design developed pursuant to this Agreement.

- 5.10.3 The Design Build Entity shall submit submittals, Product Data, Samples and Shop Drawings to the County for review in strict accordance with Section 01 33 00 (Submittal Procedures). Submission of a Submittal or shop drawing shall constitute the Design Build Entity's representation that all requirements of Section 01 33 00 have been complied with. All Submittals and Shop Drawings will be identified as the County may require and made in the number of copies specified in Section 01 33 00. The Design Build Entity shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design Build Entity's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review. The Design Build Entity shall submit Shop Drawings samples that relate to finish materials and products that have been approved by the Architect of Record.
- 5.10.4 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. The Design Build Entity shall review, approve, and submit to the County 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 the Design Build Entity that are not required by the Contract Documents may be returned without action by County. The 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 and no exceptions have been taken by the County. 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.
- 5.10.5 If the 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. The 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.

- 5.10.6 The Design Build Entity shall not be relieved of responsibility for deviations from requirements of the Contract Documents by County's review of Shop Drawings, Product Data, Samples, or similar Submittals, unless the Design Build Entity has specifically informed the County in writing of such deviation at the time of submittal and the County has given written approval of the specific deviation. The 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 review, acceptance, comment, or approval thereof. The 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 on previous Submittals. The County will review first resubmittal of Shop Drawing at its cost. The County reserves the right to reduce the Contract Price by Change Order for its cost, including but not limited to the cost of third party reviews, for any subsequent reviews of Shop Drawings or other resubmittals.
- 5.10.7 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, unless the item is designated as one for which no substitutions will be accepted, see Section 01 61 00 (Product Requirements). Any variation in quality must be approved by the County.
- 5.10.8 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.
- 5.10.9 The Design Build Entity shall not perform work requiring submission of a Submittal, Product Data, Sample or Shop Drawing prior to favorable review by the County of the Submittal, Product Data, Sample or Shop Drawing. The County's review of Submittals, Product Data, Sample or Shop Drawings shall be performed so as not to delay the Design Build Entity's performance. Where a Submittal, Product Data, Sample or Shop Drawing is required by the Contract Documents, any related Work performed prior to favorable review of the pertinent Submittal, Product Data, Sample or Shop Drawing will be at the sole expense, responsibility and risk of the Design Build Entity. The County's review of Shop Drawings,, Product Data, Samples and Submittals shall not relieve the 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 the Design Build Entity, consistent with these Contract Documents.

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 The County or its Project Partners may perform with its own forces, construction or operations related to the Project. The County or its Project Partners 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.
- 6.1.2 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 contract with the County or its Project Partners.
- 6.1.3 When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, County shall notify the Design Build Entity of such separate contracts before work on the Site pursuant to those contracts begins. County shall give such notice to the Design Build Entity with enough time to reasonably allow Design Build Entity to coordinate as required by Section 6.2 below (Coordination and Cooperation).

6.2 Coordination and Cooperation

- 6.2.1 The Design Build Entity shall afford all other separate contractors, utility owners, the County (if the County is performing work with its own forces), and its Project Partners proper and safe access to the Site, including such access to other lands and facilities designated in the Contract Documents for use by the 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 The Design Build Entity shall coordinate its work with the work of other separate contractors, the County, its Project Partners, 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, the 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. The 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 the Design Build Entity under paragraphs 6.2.1 through 6.2.3 above are for the benefit of the County and its Project Partners 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 the Design Build Entity's Work is to interface with Work performed or installed by others, the 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 the 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 the 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 the 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 or its Project Partners contract 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 the 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.) The 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 this Contract.
- 6.3.2 The 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 below (Claims by Design Build Entity) below, by the Design Build Entity will be allowed therefore to the extent the suspension or work change is due to the 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 contractor retained by the County or its Project

Partners to coordinate its work with the Design Build Entity and other contractors and utility owners, then resulting damages or Claims by Design Build Entity will be evaluated. The County reserves the right to back charge the Design Build Entity for any damages or claims of other contractors incurred as a result of the 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 the 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 Representative 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 Representative (referred to herein as "County's Representative" or "County Representative") authorized to act on the County's behalf with respect to the Project, together with the scope of his/her respective authority. Functions that this Contract provides will be performed by the County may be delegated by the County to its Representative only by written notice to the Design Build Entity from the County. The 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 this Contract. Directions and decisions made by the County's authorized representatives within the scope of this authorization shall be binding on the County.
- 7.1.3 During the term of this Contract, the County's Representative shall have the right to review Design Build Entity's Work at such intervals as deemed appropriate by the Representative. However, no actions taken during such review or site visit by the County Representative shall relieve the 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 Completion Date beyond the Contract Times.

- 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, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the 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 the 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 the Design Build Entity. Communications by the Design Build Entity and Subcontractors with Separate Contractors 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 53 (Agreement) occur during field visits or by telephone, Design Build Entity shall immediately confirm them in a written document copied to the County. The Design Build Entity shall not rely on oral or other non-written communications.
- 7.1.6 Based on the County's Representative's Site visits, review of the Work, and evaluations of Design Build Entity's Applications For Payment, the County's Representative will recommend amounts, if any, to be paid the Design Build Entity and will issue Certificates For 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 the Design Build Entity, or any person or entity claiming under, or through, the Design Build Entity.

7.1.8 The County's Representative (a) will have the authority to conduct inspections in connection with any Beneficial Occupancy pursuant to Section 13.25 below (Beneficial Occupancy), and to determine the dates of Substantial Completion and Final Completion; (b) will receive for review any records, written warranties, and related documents required by the Contract Documents and assembled by the Design Build Entity; and (c) will issue a final Certificate For Payment upon the Design Build Entity's full satisfaction of the requirements of the Contract Documents.

7.1.9 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 the Design Build Entity. Should the 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; or question whether the Work is within the scope of the Contract Documents; then, before proceeding with the Work affected, the 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 the 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, the 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 the 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 the 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

- 7.3.1 As required by Section 01 29 00 (Payment Procedures), the 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 review the Design Build Entity's Applications for Payment and make payment thereon, and the Design Build Entity shall make payments to Subcontractors, subconsultants suppliers and others, as required by Section 01 29 00 (Payment Procedures).

7.4 Election re: Public Contract Code Section 22300

- 7.4.1 Not later than twenty (20) Days before submitting the first Application for Payment, Design Build Entity shall inform County, in writing, whether it chooses to substitute securities in lieu of retention or have retention paid directly into an escrow account as provided in Public Contract Code §22300. If Design Build Entity elects to do so, it will comply with all requirements of that statute, including but not limited to executing an Escrow Agreement for Security Deposits in Lieu of Retention in the form set forth in Document 00 62 90 (Escrow Agreement for Security Deposits in Lieu of Retention).

8. CONTROL OF THE WORK

8.1 Supervision of Work by Design Build Entity

- 8.1.1 The Design Build Entity shall manage, supervise and direct design and construction of 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. The 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. The Design Build Entity shall be responsible to see that the completed Work complies with the Contract Documents and accepted Construction Documents.
- 8.1.2 The 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 the Design Build Entity's representative at the Site and shall have complete authority to act on behalf of the Design Build Entity. All communications given to, and received from, the Superintendent shall be binding on the Design Build Entity. Failure to maintain a Superintendent on the Project site at all times

Work is in progress shall be considered a material breach of this Contract, entitling the County to terminate the Contract or, alternatively, suspend the Work until the Superintendent is on the Site.

- 8.1.3 The Design Build Entity shall have and maintain at the Site a full-time Quality Control Manager, who will have duties in addition to quality control, and a full-time project manager whose duties shall include providing quality control documents to the County showing 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

- 8.2.1 The County may observe and monitor the design and construction through its representatives, agents, employees, consultants or others. The 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

- 8.3.1 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 the 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 other agencies with jurisdiction, to have access to the project staff and facilities whenever project activities are in progress and ensure that all of Design Build Entity's Subcontractors and Subconsultants will provide proper facilities for access, monitoring, and inspection.

8.4 Existing Utilities

- 8.4.1 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 at 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 Price. Additional Underground Facilities whose locations are unknown to the County may exist. Design Build Entity shall be alert to their existence; if they are encountered, The Design Build Entity shall immediately report to County for disposition of the same. In addition to reporting if any utility is damaged, the Design Build Entity shall take appropriate action as provided in this Document 00 72 53. Additional compensation or extension of time on account of utilities not shown or otherwise brought to the 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.

8.4.1.1 At no additional cost to the County, the 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. The Design Build Entity shall take immediate action to restore any in-service installations damaged by the Design Build Entity's operations. Should the County determine that the 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.

8.4.1.2 Consistent with Government Code § 4215, as between the County and the 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 the 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.

8.4.1.3 Prior to performing Work at the Site, the 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, the 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.

8.4.1.4 Nothing in this Document 00 72 53 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 the 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. The 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 Contract Documents.

8.5 Underground Facilities

8.5.1 Before commencing work of digging trenches or excavation, the 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 4216.9, and in particular § 4216.2 which provides, in part:

- 8.5.1.1 “Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center at least two (2) Business Days, but no more than fourteen (14) Days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator, and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation.”
- 8.5.2 The Design Build Entity shall contact USA, 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. The Design Build Entity is charged with knowledge of all subsurface conditions reflected in USA records. Prior to commencing excavation or trenching work, the Design Build Entity shall provide County with copies of all USA records secured by the 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. The Design Build Entity’s excavation shall be subject to and comply with the Contract Documents, including without limitation Article 2 above (Scope of Design Build responsibility) and Section 8.4 above (Existing Utilities) of this Document 00 72 53.
- 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 an inquiry notification number and notify its members that have subsurface

installations of the area of the proposed excavation, then the Design Build Entity shall be fully responsible for locating the Underground Facilities and protecting such Underground Facilities during excavation. In locating the Underground Facilities the 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 the Design Build Entity. The 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, the 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 the Design Build Entity under the Contract Documents and at law and the 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 Price and the 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 otherwise reasonably available to the Design Build Entity, then the 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 Section 16.4 below (Emergencies) of this Document 00 72 53), identify the owner of such Underground Facility and give written notice to that owner and to County. During such time, the Design Build Entity shall be responsible for the safety and protection of such Underground Facility.

8.5.6 The Design Build Entity shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility if 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

8.5.6.2 The Design Build Entity did not know of it; and

8.5.6.3 The Design Build Entity could not reasonably have been expected to be aware of it or to have anticipated it from the information available. (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 Price or an extension of the Contract Times will not be due, even if the Underground Facility was not indicated in the Contract Documents, in the information supplied to the 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 the Design Build Entity.)

8.5.7 Underground Facilities are inherent in construction involving digging of trenches or other excavations and the Design Build Entity is to apply its skill and industry expertise 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, including but not limited to the locating techniques above.

9. WARRANTY AND GUARANTEE; INSPECTION AND MAINTENANCE OF WORK

9.1 Warranty and Guarantee

- 9.1.1 General Representations and Warranties: the Design Build Entity represents and warrants that it, and its Subcontractors and designers of every tier are, and at all times will be, capable of performing every element 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.
- 9.1.2 The Design Build Entity warrants that all design, engineering, design related services, construction work and construction services shall be performed in accordance with generally accepted professional standards of good and sound design and construction practices observed by builders and designers with specific experience and specialized expertise in the type of Work included in the Contract Documents.
- 9.1.3 Design Build Entity warrants to the County that all Work will be performed in accordance with the professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for projects of the type, scope, quality and complexity of the Project utilizing the design/build contracting mode.
- 9.1.4 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, 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 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, the Design Build Entity shall furnish satisfactory evidence of compliance with this warranty.
- 9.1.5 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 design, engineering, materials, construction and workmanship, and shall conform in all respects with all Legal Requirements, licenses, and permits, the Contract Documents, 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.

9.1.6 Extended Guarantees: If any guaranty exceeding two (2) years is provided by the supplier or manufacturer of any equipment used in the Work, then the Design Build Entity shall use best efforts to assist the County in pursuing such extended guarantees for such materials. The Design Build Entity shall supply and assign to the County all warranty and guarantee documents relative to equipment and materials incorporated in the job and guaranteed by its suppliers or manufacturers.

9.1.7 Environmental and Toxics Warranty: The covenants, warranties and representations contained in this Section 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 completion. Design Build Entity covenants, warrants and represents to County that:

9.1.7.1 No litigation regarding environmental or toxics conditions is pending or, to the Design Build Entity's knowledge, proposed, threatened or anticipated with respect to any matter affecting the Project or the operation thereof.

9.1.7.2 To the Design Build Entity's knowledge after due inquiry, no lead or asbestos-containing materials were installed or were discovered in the Project at any time during the Design Build Entity's construction thereof. If any such materials were discovered, Design Build Entity made immediate written disclosure to the County.

9.1.7.3 To the Design Build Entity's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCB's are or were located on the Project at any time during the Design Build Entity's construction thereof. If any such materials were discovered, the Design Build Entity made immediate written disclosure to the County.

9.1.7.4 To the Design Build Entity's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the

Project at any time during the Design Build Entity's construction thereof except as required to be installed by the Contract Documents. If any such materials were discovered, the Design Build Entity made immediate written disclosure to the County.

- 9.1.7.5 The Design Build Entity's operations concerning the Project are not and were not in violation of any applicable environmental federal, state, or local statute, law, ordinance, code, rule, order or regulation dealing with hazardous or toxic materials or substances, and no notice from any governmental body has been served upon the Design Build Entity claiming any violation of any such statute, law, ordinance, code, rule, order or regulation, 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 statute, law, ordinance, code, rule, order or regulation, with which the 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 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 governmental agencies with jurisdictional interests. The Design Build Entity shall provide them proper and safe conditions for such access and advise them of the 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 The Design Build Entity shall give the County a minimum of three (3) Business Days' 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 require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of a public body, the 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 the Design Build Entity of its obligations under this Contract. The County will pay the cost of initial testing and Design Build Entity shall pay all costs in connection with any follow-up or additional testing. The 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 the Design Build Entity's purchase thereof for incorporation in the Work.

9.2.3.1 County reserves the right, in its sole discretion, 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 public and quasi-public entities having jurisdiction.

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 the 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 industrial hygiene 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 personal 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 the 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 the 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 Price 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 Times shall be made by Change Order. If such uncovered Work is not in accordance with the Contract Documents and accepted Construction Documents, the Design

Build Entity shall pay such costs and shall not be entitled to an adjustment of the Contract Times or the Contract Price.

- 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 the Design Build Entity's expense.
- 9.2.6 Whenever required by the County, the 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. The 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 accepted Construction 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 the Design Build Entity. The Design Build Entity shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents and accepted Construction Documents, nor relieved of any guaranty, 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. The 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 "Defective Work" includes, without limitation, any element of the Work, design services or construction that does not meet the requirements of the Contract Documents or accepted Construction Documents, is incomplete, or that fails to perform as represented by Design Build Entity.
- 9.3.2 If the 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 the Design Build Entity to replace any Defective Work, or stop any portion of Work to permit the County (at the Design Build Entity's expense) to

replace such Defective Work. The County is not obligated to exercise these rights for the benefit of the Design Build Entity or any other party.

9.3.3 If required by the County, the Design Build Entity shall promptly, as directed, 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. The Design Build Entity shall pay all claims, costs, losses and damages County incurs that are caused by or result from such correction or removal (including but not limited to all costs of repair or replacement of work of others) provided that County makes reasonable efforts to have the work performed at prices that do not exceed local market costs under the circumstances. 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 the Design Build Entity. The 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 Price, the County may deduct from monies due or to become due the 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 the Design Build Entity disagrees with the County's calculation, it may make a claim as provided in Article 12 below (Claims by Design Build Entity) below. The County's rights under this Section 9.3 (Correction of Defective Work) shall be in addition to any other rights it may have under the Contract Documents or by law.

9.3.4 Correction Period: If within two (2) years after the date of Final Completion 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, the 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 there from. If the 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.

- 9.3.5 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 Substantial 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 Section 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.
- 9.3.6 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 year of any correction period, the revised correction period hereunder with respect to such Work will be for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.
- 9.3.7 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 the Design Build Entity's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by Design-Builder or Work of the 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 the Design Build Entity the opportunity to repair, Design Build Entity does 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.
- 9.4.2 The 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 Price, in which case the County may deduct from monies due or to become due to the 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 the Design Build Entity disagrees with the deduction, the Design Build Entity may make a Claim as provided in Article 12 below (Claims by Design Build Entity). If the acceptance occurs after Final Payment, an appropriate amount shall be paid by the Design Build Entity as determined by the County.
- 9.4.3 The County may correct Defective Work: If the 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 Section 9.3 above (Correction of Defective Work) above, or to provide a plan for correction of defective Work acceptable to the County, or if the Design Build Entity otherwise fails to perform the Work in accordance with Contract Documents and accepted Construction Documents, the County may, after seven (7) Days written notice to Design Build Entity, correct and remedy any deficiency. In connection with such corrective and remedial action, the County may exclude the 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 the 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 the 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 Section 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 Price. If the parties are unable to agree on the amount of an appropriate decrease in the Contract Price, the County may deduct from monies due or to become due to the 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 the Design Build Entity's Defective Work. If the Design Build Entity disagrees with the County's calculation, it may make a Claim as provided in Article 12 below (Claims by Design Build Entity) of this Document 00 72 53.

- 9.4.4 If the Design Build Entity fails to pay the costs of such removal and storage as required by this Section 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. The Design Build Entity shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which the 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 the Design Build Entity is liable to County, the Contract Price shall be reduced by such deficiency. If there are no remaining payments due the Design Build Entity or the remaining payments are insufficient to cover such deficiency, the Design Build Entity shall promptly pay the difference to the County.
- 9.4.5 The Design Build Entity's obligations under this Section are in addition to and not in limitation of its warranty under Section 9.1 (Warranty and Guarantee) of this Document 00 72 53 or any other obligation of the Design Build Entity under the Contract Documents or law. Enforcement of the 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 the Design Build Entity under the Contract Documents and in no way limits either the Design Build Entity's liability for Defective Work or the time within which proceedings may be commenced to enforce the Design Build Entity's obligations under the Contract Documents or law.

9.5 Rights Upon Inspection or Correction

- 9.5.1 The Design Build Entity shall not be allowed an extension of the Contract Times (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 (Warranty, Guaranty, and Inspection of Work) of this Document 00 72 53. Where the County reasonably exercises its rights under Article 9 of this Document, it retains all other rights it has by law or under the Contract Documents, including but not limited to, the right to terminate the Design Build Entity's right to proceed with the Work for cause under the Contract Documents and/or make a claim or back charge where a Change Order cannot be agreed upon.
- 9.5.2 Inspection shall not relieve the Design Build Entity of its obligation to have furnished material and workmanship in accordance with Contract Documents and accepted Construction 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. The Design Build Entity's obligation to complete the Work in accordance with the Contract Documents and accepted Construction 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 the Design Build Entity and furnished to the County in such quantities and sizes as may be required for proper examination, analysis and tests.
- 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 the Design Build Entity has complied or is complying with requirements of Contract Documents not readily enforceable through inspection and tests of Work and materials, the 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 or certificate 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 this Contract, or of any power herein reserved by the County or any right to damage herein provided, nor shall any waiver of any breach of this Contract be held to be a waiver of any other subsequent breach.

9.9 Maintenance of Work

Up to the time of Final Completion, as defined in Section 01 42 16 (Definitions), the 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 the Design Build Entity.

9.10 Maintenance During Warranty Period

For a period of two (2) years following Final Completion, the Design Build Entity will provide or perform all manufacturer's recommended maintenance on the following systems: elevators; all HVAC systems; plumbing; natural gas systems; fire sprinkler systems; electrical systems; fire alarm system; paging and speaker systems; communications/data systems and security systems.

10. DESIGN BUILD ENTITY'S ORGANIZATION AND EQUIPMENT

10.1 Design Build Entity's Legal Address

The physical and electronic mail addresses given in Proposal are hereby designated as the legal addresses of the Design Build Entity, but such addresses 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 addresses or telecopy number. Delivery to the 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 the Design Build Entity at the legal address, of any plan, notice, letter or other communication, shall be deemed legal and sufficient service thereof upon the Design Build Entity. Electronic mail to the Design Build Entity's designated electronic mail address of any letter, memorandum, or other communication, with proof of electronic mail transmission, shall also be deemed legal and sufficient service thereof upon the Design Build Entity.

10.2 Design Build Entity's Office at the Site

The 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 the Design Build Entity's representative or delivered at the Site office in representative's absence shall be deemed to have been given to the Design Build Entity.

10.3 Design Build Entity's Superintendents or Forepersons

The 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 the Design Build Entity shall be liable for faithful observance of instructions delivered to the 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

The 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 the Design Build Entity that any of its employees, or any of its Subcontractors' employees employed on the Work is incompetent, unfaithful, disorderly or profane, or fails to observe customary standards of conduct or refuses to carry out any provision of the Contract Documents, or uses threatening or abusive language to any person on the Work (including persons representing County), or violates sanitary rules, or is otherwise unsatisfactory in the reasonable opinion of the County, and if the County requests that such person be discharged from the Work, then the 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.

10.6 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, the 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 Times. 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 the 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 the 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 the 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 the 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 moneys 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 the Design Build Entity as if paid to the 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 Section 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 Section 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 Section 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 Section 10.6 (Design Build Entity to Supply Sufficient Workers and Materials) of this Document 00 72 53, direct the 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, the Design Build Entity shall work said overtime and/or shift work, and the County shall pay the 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's Use of the Site

10.7.1 The Design Build Entity shall not make any arrangements with any person to permit occupancy or use of any land, structure or building on the Site 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. The Design Build Entity may not occupy County-owned property outside the limit of the Work as shown on the Drawings unless it obtains prior written approval from the County. Personnel of the 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.

- 10.7.2 The 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 the Design Build Entity. The Design Build Entity shall remove all excess dirt, waste material, and rubbish caused by the 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 part of the Work, the 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. The Design Build Entity shall promptly report in writing to the County any conflict, error, ambiguity or discrepancy which the Design Build Entity may discover and shall obtain a written interpretation or clarification from the County before proceeding with any of the Work affected thereby.
- 11.1.2 The Design Build Entity shall submit an operating electronic version of an original, plus Hardcopies of the following schedules to the County:

11.1.2.1 Schedules and Reports as required by Sections 01 32 26 (Schedules and Reports) and 01 33 00 (Submittal Procedures).

11.1.2.2 Preliminary Schedule of Values for all the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide each schedule of value into component activities in sufficient detail to serve as the basis for progress payments during construction, for each of the four primary components of the work

(Courts Building, County Building, Shared Facilities, and Sitework). Such Schedule of Values will include an appropriate amount of overhead and profit 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 Section 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 the 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. Schedules shall be updated and completed as required by Sections 01 29 00 (Payment Procedures), 01 32 26 (Schedules and Reports) and 01 33 00 (Submittal Procedures). No progress payment shall be due or owing to the 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 Sections 01 29 00 (Payment Procedures), 01 32 26 (Schedules and Reports) and 01 33 00 (Submittal Procedures). The County's acceptance of the 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 the Design Build Entity from the Design Build Entity's full responsibility, therefore.
- 11.1.4 Before commencing any portion of the Work, the 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 the 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 the Design Build Entity proposes to begin Work, so that the County may perform necessary preliminary work without inconvenience to the Design Build Entity.
- 11.1.5 The Design Build Entity shall submit submittals and shop drawings to the County for review in accordance with Section 01 33 00 (Submittal Procedures). Submission of a Shop Drawing shall constitute the Design Build Entity's representation that all requirements of Section 01 33 00 (Submittal Procedures) have been complied with. All Submittals will be identified as the County may require and submitted in the number of copies

specified in this Document 00 72 53 or Section 01 33 00 (Submittal Procedures).

- 11.1.6 The 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. 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 the Design Build Entity.
- 11.1.7 The Design Build Entity shall utilize the Progress Schedules in planning, scheduling, coordinating, performing and controlling the Work (including all activities of Subcontractors, equipment vendors and suppliers). The Design Build Entity shall update the Progress Schedules on a monthly basis for purpose of recording and monitoring the progress of the Work and evaluating and preparing the Design Build Entity's monthly progress payments.
- 11.1.8 The Design Build Entity's failure to submit and maintain an acceptable progress schedule may, in the County's discretion, and without limiting the materiality of the Design Build Entity's other obligations under the Contract Documents, constitute grounds to declare the 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 the Design Build Entity, at the 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 the 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, the 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 the 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 Cost Data and Other Records

- 11.3.1 The 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. Design Build Entity shall prepare and delivery to County summaries or reports comparing actual project costs with Proposal estimates or any budgets, no less often than monthly.
- 11.3.2 The Design Build Entity shall maintain daily job reports as provided in Section 01 32 26 (Schedules and Reports). The Design Build Entity shall provide the County with copies for each day the 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.
- 11.3.3 Design Build Entity shall take weekly progress photographs of all areas of the Work.
- 11.3.4 The Design Build Entity shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.
- 11.3.5 The Design Build Entity shall report to the Surety promptly upon receiving requests from the Surety to provide reporting.
- 11.3.6 The County shall have the right to audit and copy the 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 the 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, Proposal documents (subject to Document 00 61 31 (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, and as-built drawings maintained by the Design Build Entity. The Design Build Entity shall maintain in a safe place at the Site one record copy of all Contract Documents, accepted Construction Documents, Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Work Directives, Force Account orders, 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 and as-built drawings.

- 11.3.7 The County and any other applicable governmental entity shall have the right to inspect all information and documents maintained under this Section 11.3 (Cost Data) at any time during the Project and for a period of five (5) years following Substantial Completion. During this five (5) year period, Design Build Entity may maintain information and documents in either paper or electronic form. This right of inspection shall not relieve the 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.

12. CLAIMS BY DESIGN BUILD ENTITY

12.1 General

In the event of a dispute between the parties as to performance of the Work, the interpretation of this 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, if applicable. Pending resolution of the dispute, if the dispute is not resolved, Contractor agrees it will neither rescind the Contract nor stop the progress of the Work but will allow determination by a court of the State of California having competent jurisdiction of the dispute, after the Project has been completed, and not before.

- 12.1.1 For all Claims which arise between a Contractor and a local agency, the procedure set forth in Public Contract Code § 9204 shall apply:

12.1.1.1 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.

12.1.1.2 Upon receipt of a Claim, County, and Contractor may by mutual agreement, extend the time period for County to respond.

- 12.1.1.3 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.
 - 12.1.1.4 If Contractor disputes County's written response, or if County fails to respond to a Claim issued pursuant to this § 25 within the time prescribed, Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute.
 - 12.1.1.5 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.
- 12.1.2 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 Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed.
 - 12.1.2.1 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.
- 12.1.3 Any disputed portion of the Claim, as identified by the statement referenced in § 25.4.4 shall be submitted to nonbinding mediation, with the County and Contractor sharing the associated costs equally.
 - 12.1.3.1 County and Contractor shall mutually agree to a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing.
 - 12.1.3.2 If County and Contractor 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.

12.1.3.3 County and Contractor shall each bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

12.1.3.4 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 the 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 3 of Title 3 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.

12.1.3.5 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 claim amounts not paid in a timely manner will accrue interest at seven percent (7%) per annum. In any suit filed pursuant to this section, 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.

12.2 Subcontractor Claims

If a Subcontractor or lower-tier subcontractor lacks legal standing to assert a Claim against County because privity of contract does not exist, Contractor may present County a Claim on behalf of a Subcontractor or lower-tier Subcontractor. A Subcontractor may

request, in writing, either on his or her own behalf or that of a lower-tier Subcontractor, that Contractor present a Claim for work which was performed by Subcontractor, or by a lower-tier Subcontractor on behalf of Subcontractor. 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, Contractor must notify Subcontractor in writing as to whether Contractor presented the Claim to County, and, if Contractor 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 The Design Build Entity shall keep fully informed of, shall comply with, and ensure that all Work complies with, all Applicable Laws, statutes, , 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 of Alameda, and all of their officers, directors, representatives, attorneys, agents, employees and consultants, associated with the Work, including but not limited to the County Board of Supervisors, County Representatives, AE-3 Partners Inc. and the County's selected Construction Management Consultant against any claim or liability, including attorney's fees, arising from or based on violation of any statutes, laws, ordinances, codes, rules, regulations or orders, whether by the 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 Contract Documents or accepted Construction Documents require larger sizes or higher standards than are required by any applicable statute, law, ordinance, code, rule, regulation or order, the larger size or higher standard shall govern. Whenever the Contract Documents or accepted Construction Documents 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 The Design Build Entity shall perform the Work in accordance with all Applicable Laws of all public authorities having jurisdiction over the County, the Design Build Entity, any Subcontractor, the Project, the Site, the Work, or the prosecution of the Work.

- 13.1.4 The Design Build Entity shall comply with all applicable sections of the Labor Code in performing the Work.
- 13.1.5 The 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 Toxic Enforcement Act of 1986 (Health & Safety Code §§25249.5 et seq.). The Design Build Entity shall promptly notify County's Representative in writing if the Design Build Entity becomes aware during the performance of the Work that the Contract Documents are at variance with Applicable Law.
- 13.1.6 If the 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 The Design Build Entity shall: (a) identify and procure all permits and licenses applicable to the Work (including 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 Design Build Entity will pay all fees required in securing such permits and licenses, except as County may specifically direct. For all such permits and licenses, the Design Build Entity shall prepare all forms and documentation necessary for any required submittal. The 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 Price, including all increases in sales and/or use taxes and all other such taxes effective as of the date of Design Build Entity's Proposal. The 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 Section 13.7 of Document 00 72 53 (General Conditions), the 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. The 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 the 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 The County of Alameda, and all of their officers, directors, representatives, attorneys, agents, employees and consultants, associated with the Work, including but not limited to the County Board of Supervisors, County Representatives AE-3 Partners Inc. and its subconsultants who prepared the Bridging Documents shall not 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 prior to acceptance of 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, or
- 13.3.1.5 any claims or liabilities imposed or existing by virtue of the removal, abatement, and disposal of Hazardous Materials and waste that was not present on the Site at the time the Contract was awarded including, but 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.)

- 13.3.1.6 Design Build Entity hereby releases all of the foregoing persons and entities from any and all such claims described in this paragraph 13.3.1.
- 13.3.2 To the fullest extent permitted by law (including without limitation Civil Code §§2782 and 2782.8), the Design Build Entity shall defend (with legal counsel reasonably acceptable to the County), indemnify and hold harmless the County of Alameda, and all of their officers, directors, representatives, attorneys, agents, employees and consultants, including but not limited to the County Board of Supervisors, County Representatives, AE-3 Partners Inc. and its subconsultants who prepared the Bridging Documents from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) (collectively, “Liabilities”), directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, the condition of the Work, or the Contract Documents.
- 13.3.3 Approval or purchase of any insurance contracts or policies shall in no way relieve from liability or limit the liability and obligations of the 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 Design Build Entity shall defend (with legal counsel reasonably acceptable to the County), indemnify and hold harmless the Indemnitees from all Liabilities that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by County, or any of the other Indemnitees, of documents or Services to be supplied in the performance of this Agreement.
- 13.3.5 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 party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach,

abandonment, or completion of the Work, the Project, the Contract, or the terms of the Contract Documents. If the Design Build Entity fails to perform any of these defense or indemnity obligations, the County may in its discretion look to the Design Build Entity to recover all of the County's costs and damages resulting there from. The County may withhold such sums from progress payments or other contract moneys which may become due, or pursue any and all other remedies available in law or in equity.

- 13.3.6 Where expressly prohibited by law, the indemnities in the Contract Documents shall not apply to any Indemnatee that is a public agency to the extent of its sole or active negligence or willful misconduct.
- 13.3.7 The County of Alameda, and all of their officers, directors, representatives, attorneys, agents, employees and consultants associated with the Work, including but not limited to the County Board of Supervisors, County Representatives, AE-3 Partners Inc. and its subconsultants who prepared the Bridging Documents shall not owe any duty of care to Design Build Entity, its Subcontractors, subconsultants or suppliers, except as set forth in this Contract.

13.4 Notice of Concealed or Unknown Conditions

- 13.4.1 If any of the following conditions is encountered at the Site or in connection with the Work, the Design Build Entity shall promptly, and before conditions are disturbed (except in an emergency as required by Section 16.4 below (Emergencies) of this Document 00 72 53), and in no event later than seven (7) Days after first observing any of the following, give County written notice of any of the following:

- 13.4.1.1 Material that the Design Build Entity believes may be material that is hazardous waste, as defined in [§25110 et. seq. of the Health and Safety Code](#), that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

- 13.4.1.2 Subsurface or latent physical conditions at the Site differing from those indicated by information about the site made available prior to the deadline for submitting Proposals.

- 13.4.1.3 Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized

as inherent in work of the character provided for in the contract.

- 13.4.2 In response to the Design Build Entity's written Notice of Differing Site Conditions under this Section 13.4 (Notice of Concealed or Unknown Conditions), the County will promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste as described above, and cause an increase or decrease in the 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 Section 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 the Design Build Entity in writing, stating reasons. If the County and the Design Build Entity do not agree on an adjustment in Contract Price or Contract Times, the Design Build Entity shall proceed with the Work as directed by the County and may file a claim as provided in Article 12 above (Claims by Design Build Entity) of this Document 00 72 53.
- 13.4.4 In the event that a dispute arises between the County and the Design Build Entity whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Design Build Entity's cost of, or time required for, performance of any part of the Work, the Design Build Entity shall not be excused from any Milestone provided for by the contract, but shall proceed with all Work. The Design Build Entity shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.
- 13.4.5 The Design Build Entity shall not be entitled to any adjustment in the Contract Price or Contract Times regarding claimed Latent or materially different Site conditions, whether above or below grade if (a) the Design Build Entity knew of the existence of such conditions at the time Design Build Entity submitted its Proposal; or (b) the Design Build Entity should have known of or expected the existence of such conditions as a result of having complied with the requirements of the Contract Documents, including without limitation Article 1 above (Investigations and Subcontractors) and Section 8.4 above (Existing Utilities) of this Document 00 72 53; or (c) the information or conditions claimed by the 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 of this Document 00 72 53 preclude reliance upon; or (d) the 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) the Design Build Entity could reasonably have inferred the existence of such conditions based on its experience and expertise on similar projects.

- 13.4.6 If the County and the Design Build Entity are unable to agree on entitlement to or as to the amount or length of any adjustment in the Contract Price or Contract Times required under this Section 13.4, the Design Build Entity shall proceed with the Work as directed by the County and may make a claim as provided in Article 12 above (Claims by Design Build Entity) of this Document 00 72 53.

13.5 Hazardous Waste or Materials Conditions

- 13.5.1 Written Notice of Hazardous Materials Condition by the 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 Section 16.4 below (Emergencies), and in no event later than twenty-four (24) hours after first observance, of any (a) material that the Design Build Entity believes may be material that is hazardous waste or hazardous material, as defined in §25100 et. seq. 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 The Design Build Entity's written Notice of Hazardous Materials Conditions under this Section 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, and whether the Hazardous Materials or other materials were brought to the Site by the Design Build Entity, its Subcontractors, subconsultants, suppliers, or anyone else for whom the Design Build Entity is responsible.
- 13.5.3 The Design Build Entity shall not be entitled to any adjustment in the Contract Price or Contract Times regarding claimed Hazardous Materials if (a) the Design Build Entity knew or should have known of the existence of such Hazardous Materials or other conditions or materials at the time Design Build Entity submitted its bid; or (b) the Design Build Entity failed to give the written Notice of Hazardous Materials Conditions within the time

required these General Conditions, or (c) if the claimed Hazardous Materials were indicated in the Project Manual.

- 13.5.4 Notwithstanding (a), (b) and (c), above, the Design Build Entity may (subject to paragraphs 13.5.2 and 13.5.3 above) be entitled to adjustment in the Contract Price or Contract Times regarding claimed Hazardous Materials if such Hazardous Material is indicated in the Project Manual or other information reasonably available to the Design Build Entity, visual observation or reasonable investigation. If the County determines 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 Section 01 26 00 (Contract Modification Procedures).
- 13.5.5 If the County determines that conditions do not involve Hazardous Materials or that no change in Contract Document terms is justified, the County shall notify the Design Build Entity in writing, stating the reasons for its determination. If the County and the Design Build Entity cannot agree on any adjustment in Contract Price or Contract Times, the Design Build Entity shall proceed with the Work and as directed by the County and may file a claim as provided in Article 12 above (Claims by Design Build Entity) of this Document 00 72 53.
- 13.5.6 In addition to the parties' other rights, if the 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 the Design Build Entity's right to proceed under the Contract Documents pursuant to Section 13.8 below (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 as the facts may warrant. If Design Build Entity does not agree with the County's determination of any adjustment in the Contract Price or Contract Times as a result, the Design Build Entity may make a claim as provided in Article 12 above (Claims by Design Build Entity) of this Document 00 72 53.
- 13.5.7 To the furthest extent permitted by law, the County shall assume the defense of, and indemnify, and hold harmless the Design Build Entity, and all of its members, officers, directors, representatives, 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, arising out of, connected with or resulting from the exposure of

persons or property to pre-existing Hazardous Materials (as defined in **Section 01 88 25**, Miscellaneous Hazardous Materials Performance Requirements), pollutants, or other toxic substances or contaminants encountered at the Site or the Project during the performance of the Work which were not indicated in the Project Manual, or on the reports and information provided by the County, other information reasonably available to Design Build Entity, visual observation or reasonable investigation, and provided that Design Build Entity did not in any way contribute to or cause the exposure and used due care in performance of the Work.

13.6 Suspension of Work

The County may, with or without cause, order the 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 Work caused by any such suspension, delay, or interruption calculated using the measures set forth in Section 01 26 00 (Contract Modification Procedures), provided, however, no adjustment to the Contract Price 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 the 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 the Design Build Entity's failure to perform any of its obligations. Adjustments to the Contract Price shall be calculated in accordance with Section 01 26 00 (Contract Modifications).

13.7 Force Majeure

13.7.1 Events. Either the County or the Design Build Entity shall be excused from performing any of their obligations (except payment) to the extent delay in performance or inability to perform is caused by an event that is not within either party's reasonable control or reasonable advance planning. Neither the County nor the Design Build Entity shall be excused to the extent such events result from that party's negligence or failure to perform any obligations under this Contract including failure to reasonably anticipate ascertainable events or its failure to utilize commercially reasonable work-around or alternate solutions. Force Majeure may include: flood; lightning; earthquake; fire; explosion; epidemic; quarantine; hurricane; tornado; storm; war (declared or undeclared); riot or similar civil disturbance; acts of nature or the public enemy (including acts of terrorism); blockade; insurrection; revolution; or unavailability of fuel, power, or raw materials if the cause thereof otherwise would qualify as a Force Majeure.

13.7.2 Exclusions. Force Majeure shall not include the following:

- 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 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 anticipated climatic conditions as described in Section 15.3 below of this Document 00 72 53 General Conditions;
- 13.7.2.7 Delays in transportation, except to the extent due to an independent event of Force Majeure;
- 13.7.2.8 Delay or denial of any permit 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 making a claim under this Section 13.7 (Force Majeure) shall give the other party notice describing the particulars of the Force Majeure promptly after its occurrence, but in no event more than seven (7) Days after the claiming party becomes aware of such occurrence.
 - 13.7.3.1 Within ten (10) Days after giving notice of the Force Majeure, the claiming party shall give the other party an

estimate of the Force Majeure'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.

13.7.3.2 The claiming party shall give the other party notice within seven (7) Days of the cessation of all or part of the Force Majeure.

13.7.4 Mitigation and Management. Both the County and the 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 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 The Design Build Entity and the County shall meet to agree upon a course of action to manage the impact of the Force Majeure 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.

13.7.4.4 No default of the claiming party which arose before the occurrence of the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

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 Schedule, overcome the effects of the Force Majeure, 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 below (Modifications of the Contract Documents) below. Changes resulting from Force Majeure are generally limited to schedule adjustments, to the extent Design Build Entity demonstrates actual schedule delay caused solely by

the effects of Force Majeure, unless the County elects to expedite or make other adjustments instead of adjusting the schedule. The County will compensate Design Build Entity for the direct costs it incurs as a result of Force Majeure, 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.

13.7.5.1 With respect to payments made by the County to the Design Build Entity for changes for Force Majeure, Design Build Entity shall reimburse such amounts to the extent such amounts are recovered from insurance coverages required under this Contract or are reduced by any savings or costs not incurred.

13.7.6 Termination for Force Majeure. For itself or at Design Build Entity's request, the County may, at its sole discretion, terminate this Contract for convenience if delays to the entire Project due to a Force Majeure exceed six (6) months in the aggregate.

13.8 Termination of Contract for Cause and Written Adequate Assurances of Performance

The Design Build Entity shall be in default of this Contract and the County may terminate Design Build Entity's right to proceed under the Contract Documents, for cause:

13.8.1 Should Design Build Entity [or any member of the Design Build Team] 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 a bankrupt or insolvent, be the subject of an involuntary petition in bankruptcy which is not dismissed within sixty (60) 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 the 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 the Design Build Entity, or if the Design Build Entity, its officers, directors or shareholders, take action to dissolve or liquidate Design Build Entity; or

13.8.2 Should the Design Build Entity commit a material breach of the Contract Documents. If the County declares the Design Build Entity in default due to material breach, however, the County must

allow the Design Build Entity an opportunity to cure such breach within five (5) Days of the date of notice from the County to the Design Build Entity providing notice of the default; or, if such breach is curable but not curable within such five Day period, within such period of time as is reasonably necessary to accomplish such cure promptly. In order for the Design Build Entity to avail itself of a time period in excess of five Days, the Design Build Entity must provide the County within the five 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; the Design Build Entity must then diligently commence and prosecute 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 five (5) Days of the date of the notice from the County or other public agency with jurisdiction over the Project to Design Build Entity demanding such cure; or, if such failure is curable but not curable within such five (5) Day period, within such period of time as is reasonably necessary to promptly accomplish such cure promptly. In order for the Design Build Entity to avail itself of a time period in excess of five Days, the Design Build Entity must provide the County within the five (5) Day period with a written plan to cure the violation acceptable to the County, and then diligently commence and prosecute performance of such cure according to the written plan.

13.8.4 If the County at any time reasonably believes that the Design Build Entity is or may be in default under its Contract, the County may in its sole discretion notify the Design Build Entity of this fact and request written assurances from the Design Build Entity of its ability to complete performance of the Contract and a written plan from the Design Build Entity to remedy any failures to perform the terms of the Contract which the County may advise the Design Build Entity of in writing. If requested by the County, Design Build Entity will provide evidence of its financial status or other ability to cure the default and complete the Work. The Design Build Entity shall, within five (5) 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 the Design Build Entity to provide written adequate assurances of performance and the required written plan will constitute a material breach of this Contract.

13.8.5 In event of termination for cause, the County shall immediately serve written notice thereof upon Surety and the 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.

13.8.6 In the event of termination by the County for cause,

13.8.6.1 The County shall compensate Design Build Entity for the value of the Work performed in accordance with the Contract Documents and delivered to the County, but payment will be made no earlier than the expiration of thirty five (35) Days after Final Completion and acceptance of all Work by the County as determined in accordance with the Contract Documents, and will be subject to all rights of offset and back charges, and provided that Design Build Entity provides the County with updated as-built and project record documents showing the work performed up to the date of termination. However, the County shall not compensate the Design Build Entity for its costs in terminating the Work or any cancellation charges owed to third parties;

13.8.6.2 The Design Build Entity shall deliver to the County possession of the Work in its then condition, including but not limited to, all designs, engineering, project records, cost data of all types, Design Development Documents, Construction Documents, Virtual Construction and other models, contracts with vendors and Subcontractors, and all other documentation associated with the Project, and all construction materials, equipment, and supplies 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.

The 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.

13.8.6.3 The provisions of this Section 13.8 (Termination of Contract for Cause and Written Adequate Assurances of Performance) shall not be interpreted to diminish any right which the County may have to claim and recover damages for any breach of this Contract, but rather, the 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.

13.8.6.4 Except as otherwise provided in the Contract Documents, the County's rights under this Section 13.8 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 elsewhere in the Contract Documents.

13.8.7 The County may terminate for cause portions or parts of the Work. In such case, Design Build Entity shall cooperate with a completing contractor as required under Article 6 above (Construction by the County or by Separate Contractors) of this Document 00 72 53.

13.8.8 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 the Design Build Entity shall have only the recovery rights specified in Section 13.9 below (Termination of Contract for Convenience). 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. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by the 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, whenever the County shall determine that termination is in the County's best interest and upon fifteen (15) Days written notice to Design Build Entity. Termination shall be effectuated by the County delivering to the Design Build Entity 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, the Design Build Entity shall:
- 13.9.2.1 Stop Work under the Contract Documents on date and to extent specified in notice of termination;
 - 13.9.2.2 Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete any 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 Subcontracts, or assign to the County in manner, at times, and to extent directed by the County, all right, title, and interest of the 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 Section 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 Construction Documents, drawings, specifications, information, models 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 the 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 the 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 Work which is in the 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, the Design Build Entity shall submit to the County its termination claim, in form and with all certifications required by the Contract Documents. The 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. The Design Build Entity and the County may agree upon the whole or part of

the amount or amounts to be paid to the Design Build Entity because of a total or partial termination for convenience of Work. If the Design Build Entity and the County fail to agree on the whole amount to be paid to the 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 limited to the total (without duplication of any items) of:

- 13.9.3.1 The reasonable cost to the Design Build Entity for all Work performed prior to the effective date of the termination, determined in accordance with Section 1.3 of Section 01 26 00 (Contract Modifications Procedures), including the Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the progress schedule and the Schedule of Values. Deductions shall be made for cost of materials to be retained by the 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 as allowed by the Contract Documents. Reasonable cost will include reasonable allowance 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 A reasonable allowance for profit on cost of Work performed as determined under subparagraph 13.9.3.1 above provided that the Design Build Entity establishes to the County's satisfaction that the Design Build Entity would have made a profit had the Project been completed, and provided further that

the profit allowed shall not exceed five percent (5%) percent of the cost, determined as provided in subparagraph 13.9.3.1 above.

13.9.3.4 Reasonable costs to the Design Build Entity of handling material returned to vendors, delivered to the County or otherwise disposed of as directed by the County.

13.9.3.5 A reasonable allowance for the Design Build Entity's internal administrative costs in preparing termination claim.

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 the 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 the Design Build Entity's termination claim, attorney fees of any type, and all other costs relating to prosecution of a claim or lawsuit.

13.9.5 The County shall have no obligation to pay the Design Build Entity under this Section 13.9 (Termination of Contract for Convenience) unless and until the Design Build Entity provides the County with updated and acceptable as-builts and Record Documents for Work completed prior to termination.

13.9.6 In arriving at the amount due the Design Build Entity under this clause there shall be deducted in whole or in the appropriate part(s) if the termination is partial:

13.9.6.1 All unliquidated advances or other payments on account previously made to the Design Build Entity, including without limitation all payments which are applicable to the terminated portion of the Contract Documents,

13.9.6.2 Any claim the County may have against the Design Build Entity in connection with the Contract Documents, and

13.9.6.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by the Design Build Entity or sold under provisions of Section 13.9 (Termination of Contract for Convenience), and not otherwise recovered by or credited to the County.

13.10 Contingent Assignment of Subcontracts

The Design Build Entity hereby assigns to the County each Subcontract, including any agreement for the provision of Project services by the Architect, now or hereafter entered into by Design Build Entity for performance of any part of the Work provided that:

13.10.1 The assignment is effective only after: (a) the County's termination of the Design Build Entity's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) pursuant to Sections 13.8 above (Termination of Contract for Cause and Written Adequate Assurances of Performance) or 13.9 above (Termination of Contract for Convenience).

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, where the Surety exercises its rights to complete the Contract;

13.10.4 After the effectiveness of an assignment, the Design Build Entity shall, at its sole cost and expense (except as otherwise provided in Sections 13.8 above (Termination of Contract for Cause and Written Adequate Assurances of Performance) or 13.9 above (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 to the County; and

13.10.4.1 Nothing in this Section 13.10 (Contingent Assignment of Subcontracts) shall modify or limit any of the 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 the Design Build Entity and may not be withdrawn.

13.11 Remedies and Contract Integration

- 13.11.1 Subject to the Contract Document provisions regarding the 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 the Design Build Entity arising out of or relating to Contract Documents, 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. 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 the 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 are the entire and integrated agreement between the County and the 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 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. The County and the Design Build Entity represent and agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents in sole reliance upon the information set forth or referenced in the Contract Documents and the parties are not and will not rely on any other information.

- 13.11.3 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.
- 13.11.4 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 Documents, 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 the 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 Contract Price. The Design Build Entity shall defend, indemnify and hold harmless the County of Alameda, and all of its elected and appointed officers, directors, representatives, judges, attorneys, agents, employees and consultants, including but not limited to the County Board of Supervisors, County Representatives, AE-3 Partners Inc. and its subconsultants who prepared the Bridging Documents (collectively "Indemnitees") from any and all damages, claims for damages, costs or expenses in law or equity, including attorney's 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 use or sell the same. Such costs or expenses for which Design Build Entity agrees to indemnify and hold harmless the above Indemnitees include but are not limited to any and all license fees, whether such fees are agreed upon by any Indemnatee or ordered by a court or administrative body of any competent jurisdiction.

13.13 Substitution for Patented and Specified Articles

- 13.13.1 Except as noted specifically in the Contract Documents, whenever in the Contract Documents a 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." Design Build Entity may, except as provided in Section 01 61 00 (Product Requirements),

offer any substitute material or process that the Design Build Entity considers equal in every respect to that so designated and if material or process offered by the Design Build Entity is, in opinion of the County, equal in every respect to the specified material or process, its use will be approved. However, the Design Build Entity may utilize this right only by timely submitting a substitution request consistent with Section 01 61 00 (Product Requirements) as provided in Document 00 11 19 (Request for Proposals from Design-Build Entities). A substitution will be approved only if it is permitted under Document 00 11 19 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, appearance, aesthetic effect, 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

The County of Alameda, and all of its elected and appointed officers, directors, representatives, , agents, employees and consultants, including but not limited to the County Board of Supervisors, County Representatives, AE-3 Partners Inc. and its subconsultants who prepared the Bridging Documents, shall have no liability to for special, consequential or incidental damages.

13.16 Severability

Any provisions or portions 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 this Contract. If the provisions of such Applicable Law may be waived, they are hereby waived to the end that this Contract may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portions thereof of this Contract are prohibited by, unlawful, or unenforceable under any Applicable Law and are therefore stricken or deemed waived, the remainder of the provisions and this 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. All provisions of Public Contract Code §22160 et.seq. are deemed incorporated into these Contract Documents.

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 the Design Build Entity. The 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 the Design Build Entity just as the Design Build Entity is responsible for the 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 the 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). The Design Build Entity shall keep the Site and all materials and equipment free and clear of all liens, stop notices and charges arising out of performance of this Contract, and shall indemnify, defend and hold harmless those Indemnitees identified in paragraph 13.3.2 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. The Design Build Entity shall promptly pay each Subcontractor the amount to which that Subcontractor is entitled, and shall, by an appropriate written agreement with each Subcontractor, require each Subcontractor to make payments to its sub-Subcontractors in a similar manner.

13.19 Proprietary or Confidential Information of County

The Design Build Entity understands and agrees that, in the performance of the services under this Contract or in the contemplation thereof, the Design Build Entity may have access to private or confidential information, which may be owned or controlled by the County or its Project Partners, and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the County or its Project Partners. The Design Build Entity agrees that all information disclosed by the County to the 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 design professional or contractor 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 or provided to the Design Build Entity and its Subcontractors are and shall remain the property of the County. The County and the Design Build Entity explicitly agree that all materials and documents developed by or on behalf of the Design Build Entity in the performance of this Contract, including drafts and working copies, are the property of the County and that the County shall have unlimited rights, for the benefit of the County, in all architectural and engineering analysis, Construction Documents, drawings, designs, specifications, notes and any other documentation and other work developed by or on behalf of Design Build Entity in the performance of this Contract for the Project (collectively, "Documents"), including the right to re-use details of the design on any other County work without further approval of Design-Builder and at no additional cost to the County. The Design Build Entity agrees to, and hereby does, grant to the County a full paid, royalty-free license to all such data that the Design Build Entity may cover by copyright and to all designs as to which the Design Build Entity may assert any right or establish any claim to under the patent or copyright laws. The Design Build Entity, for a period up to ten (10) years from the date of Substantial 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 Documents, including but not limited to artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, models, surveys, source codes or any original works of authorship created by Design Build Entity or its Subcontractors or designers in connection with services performed under this 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 this Contract are not works for hire under U.S. law, Design Build Entity hereby assigns all copyrights to such works to the County and will by contract require all Subcontractors to assign all copyrights 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 The Design Build Entity agrees to assist the County in every proper way to secure the County's rights in any copyrights, patents, mask work 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 County the sole and exclusive rights, title and interest in and to such copyrights, patents, mask work rights or other intellectual property rights relating thereto. The 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 this Contract. If the County is unable to secure the 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 Design Build Entity hereby irrevocably designates and appoints the County 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 the Design Build Entity.

- 13.20.4 County's rights under this Section 13.20 include all electronic files and other Documents prepared by or on behalf of Design Build Entity.

13.21 Compliance with Americans with Disabilities Act

The 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. The Design Build Entity shall perform the Work, including but not limited to design and construction of the Project, in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Design Build Entity agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and further agrees that any violation of this prohibition on the part of the Design Build Entity, its Subcontractors, subconsultants, designers, employees, representatives, agents or assigns shall constitute a material breach of this Contract.

13.22 Disputes

Design Build Entity's failure to continue the Work during any and all disputes shall be considered a material breach of this Contract. The Design Build Entity agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Contract, including but not limited to, the Contract Times. The Design Build Entity also agrees that should the Design Build Entity discontinue the Work due to a dispute or disputes, the County may terminate this Contract for cause. The Design Build Entity further agrees that should the Design Build Entity not properly perform the Work due to a dispute or disputes, any and all claims, whether in law or in equity, the 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, the Design Build Entity, pursuant to subparagraph 1.7.4.4 of Section 01 29 00 (Payment Procedures), will be entitled to be paid undisputed amounts by the County.

13.23 Statute of Limitations

As between the parties to this Contract: as to all acts or failures to act by either party to this Contract, any applicable statute of limitations shall commence to run no sooner than the date of issuance by County of the final Certificate for Payment, or the effective date of a termination of all of this Contract, whichever is earlier, except for warranties, indemnity obligations, and Latent defects, in which case the cause of action shall accrue on discovery and determination of 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 this 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 Substantial Completion or Final Completion upon ten (10) Days notice to the Design Build Entity. Such occupancy is herein referred to as "Beneficial Occupancy." Beneficial Occupancy shall be subject to the following conditions:

- 13.25.1 The County's Representative will make an inspection of the portion of the Project to be Beneficially Occupied and prepare a list of items to be completed or corrected prior to Final 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 the 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 the 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 and on a twenty-

four (24) hour and seven (7) Day week basis as required, 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 equipment in such areas shall remain with the Design Build Entity during Beneficial Occupancy and while the equipment is so operated. The Design Build Entity shall submit to the County an itemized list of each piece of equipment so operated with the date operation commences.

- 13.25.5 The guarantees to repair as defined in this 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 Section 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 Design Build Entity and the County shall share on a pro rata basis the responsibility for any costs arising solely 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 the Design Build Entity’s the remaining Work.
- 13.25.8 The 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 the 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

The Design Build Entity agrees to correct any error or omission in the Construction Documents at no additional cost to the County.

13.28 Required Permits:

13.28.1 City of Dublin Development Review and Right of Way Approvals;

The County and City of Dublin entered into an agreement on May 15, 2018 (“Agreement”) including its “Exhibit A”. (See Part –F of the Project Manual- Reference Documents) that outlines the roles and responsibilities of the City of Dublin (the “City”) and the County in the submittal, review and construction of the Dublin Transit Center Parking Garage. The (“Agreement”) states “the County shall comply with all City rules, regulations, resolutions, ordinances or other enactments relating to land use.” The City of Dublin waives, in part, the site development review process for the Project and agrees to review the Project in a consultation role. All off-site improvements required for this Project require an Enchroachment Permit issued by the City of Dublin .

13.28.2 The County submitted the Bridging Design package including the “On-site and Off-Site Civil Construction drawings to the City of Dublin, to satisfy the City’s site development review in consultation role, as outlined in the (“Agreement”). The County also submitted an application to the City of Dublin for an Enchroachment Permit for all Off-Site Improvements as required by this Project. The Bridging design package incorporates the City’s second round of review comments associated with the Enchroachment Permit into the final design. The Design Build Entity must comply with and satisfy all of the listed and deferred design work noted on the Bridging Design Package and the Bridging Design Team’s response to the final plan review comments (See City of Dublin Enchroachment Permit - Plan Review Communications in Part F - Reference Documents) required for the City of Dublin

13.28.3 Building and Grading Permits: The Project site is located on County-owned land and a building permit from the City of Dublin is not required. The Design Build Entity shall obtain through the County’s Public Works Agency all necessary plan check review, permits, and inspections required for all on-site work related to the Project. This includes but is not limited to Building Permit, Land Development and Grading Permits

- 13.28.4 The Design Build Entity shall obtain all necessary permits required by other agencies (Alameda County Flood Control District Zone 7, Dublin San Ramon Services District, California Department of Fish and Game, Army Corps of Engineers, State Water Quality Control Board, etc.) as needed.
- 13.28.5 Fees. The Design Build Entity shall pay all the required fees prior to the establishment of use and the building opening to serve the public including but not limited to the City of Dublin Fire Facilities Fee.
- 13.29 Compliance with EIR Mitigation Measures. The County completed the environmental review process as required by the California Environmental Quality Act (CEQA). The Project is required to comply with all mitigation measures as noted in sections 16.8.1 thru 16.8.2.
- 13.30 Review of the Final Design/Build drawings. Pursuant to paragraph 13.28 above, the County provided to the City for review and comment, the County's bridging package including elevations, site plan, site access, lighting, and conceptual landscaping plans. In order for the City to ensure that the final design build plans are consistent with the City's initial review comments on the Schematic design, the final design build plans shall be submitted to the City for their records and for the City to verify that the final Design is consistent with their earlier reviews. The plans shall be submitted to the City of Dublin Community Development Director or his/her designee prior to issuance of a building permit by the Alameda County Public Works and prior to start of construction. These plans are to be submitted to the City of Dublin Community Development Director (or designee) at which time, the City will have 15 business days to submit its comments to the County in response to the plan.
- 13.31 Changes to Project Plans. Any amendment to the plans must be approved by the GSA Deputy Director of Capital Program and be reviewed by City of Dublin consistent with the ("Agreement") between the City of Dublin and the County of Alameda General Services Agency as approved by the Dublin City Council on May 15, 2018 by Resolution 59-18. (See Part -F of the Project Manual-Reference Documents: "City of Dublin and County's Letter of Agreement" including "Exhibit A").
- 13.32 Site work and Street Improvements:
- 13.32.1 Site and Parking Structure Lighting. The Design Build Entity shall design the final Site and Parking structure lighting to ensure that the light is concentrated and focused on site and does not impact neighboring businesses or residents. The Design Build Entity shall ensure that lighting on the top deck of the garage is designed to minimize impacts to existing and future development surrounding the site (including potential future residential development of the remainder of Site D and also the existing Esprit residential project).
- 13.32.2 Perimeter fencing.

Temporary fencing during construction: Design Build Entity shall provide construction fencing as outlined in the design narrative within the bridging documents.

Permanent fencing: During the detail design phase of the Project, Design Build Entity shall study the overall perimeter site security fencing approach and develop an acceptable solution that will address the conditions at the two adjoining sites. Between the two subdivided parcels within parcel D and between this site and the adjoining Bart site. The fence design shall include all easements and pathways from this site to perimeter streets. The design of perimeter fencing will be reviewed and approved by GSA Capital Program Manager and the Dublin Community Development Director or his/her designee prior to installation.

- 13.32.3 Building and site signage. Signage and wayfinding that is external to the garage is subject to review and approval by the Dublin Community Development Director or his/her designee prior to installation. Signage and wayfinding within the Parking Structure must conform to the general requirements set in Part B - Bridging Documents (Basis of Design Narrative), Part C - Bridging Documents (Technical Specifications: Volumes 1 -49) and Part E - Bridging Documents (Parking Structure Schematic Drawings).
- 13.32.4 Off-Site Improvements: Street improvements are required on Iron Horse Parkway, Martinelli Way, and Campus Drive. Improvements shall be consistent with the Transit Village Center standards in the Eastern Dublin Specific Plan and compatible with the existing street improvements on adjacent property frontages. Standards include colored concrete sidewalks with integrated paver bands, tree wells with grates, specific street light fixtures, and potentially pedestrian scale lighting. The scope of Street improvements are reflected in the "On-site and Off-site Construction Documents" within the Bridging documents which will be subject to final review, approval, and permitting by the City of Dublin prior to start of construction.
- 13.32.5 As noted in paragraph 2.1 above the Design Build Entity is required to review the "On-site and Off-site Construction Documents" and propose any necessary changes to these documents in order to take full ownership of the Engineer of record responsibility. The Design Built Entity shall submit the final Improvement Plans, prepared by a licensed civil engineer, for all work within the public right-of-way or easements, for final review and approval by the Dublin Director of Public Works. The improvement plan package shall include additional plan sets required by the City of Dublin as noted on the City of Dublin Encroachment Permit - Plan Review Communications – (See Part F of the Project Manual – Reference Documents) for landscaping, joint trench and street Lighting or other improvements as needed, prepared by the appropriate licensed design professional.

- 13.32.6 Pursuant to Section 7.16.620 of the Dublin Municipal Code, the Design Build Entity shall enter into an Improvement Agreement with the City of Dublin to guarantee completion of the required improvements. The agreement and security shall be provided prior to issuance of an encroachment permit for work in the public right-of-way, and prior to start of any work in the public right-of-way. The Agreement will require an improvement security to be posted by the Design Build Entity's contractor to guarantee the faithful performance of the permitted work and the payment for labor and materials. Such security shall be in the form of cash, a certified or cashier's check, a letter of credit, or surety bonds executed by the Design Build Entity and by a corporate surety authorized to do business in California. The amount of the Security guaranteeing faithful performance shall be 100% of the estimated cost of the work. The amount of the Security guaranteeing the payment for labor and materials shall be 100% of the estimated cost of the work, all work completed in the public right of way shall be subject to the payment of prevailing wages. The Design Build Entity shall provide an estimate of these costs with the submittal of the Final Plans. In lieu of submitting separate bonds for the work in the public right-of-way, the contractor may name the City of Dublin as a beneficiary to the security provided to the County, provided the scope and cost of the work in the public right-of-way are clearly defined and conform to the approved cost estimate for the work in the public right-of-way.
- 13.32.7 City of Dublin Encroachment Permit. The Design Build Entity shall finalize the encroachment permit that the County has submitted for all work within the public right-of-way, prior to the start of construction. All work within the public right-of-way shall be subject to inspection by the Dublin Department of Public Works. The Design Build Entity shall be responsible for any additional cost beyond what the County has already paid and for all plan review, permit, and inspection costs incurred by the Dublin Department of Public Works for work within the public-right-of-way. A public access easement shall be dedicated for any portion of the sidewalk outside of the public right of way.
- 13.32.8 Dublin San Ramon Services District (DSRSD). The following conditions shall be complied with prior to establishment of use and the building opening to serve the public to the satisfaction of Dublin San Ramon Services District ("DSRSD"), unless another timeframe is specified in the condition:
- 13.32.8.1 Complete improvement plans shall be submitted to DSRSD that conform to the requirements of the Dublin San Ramon Services District Code, the DSRSD "Standard Procedures, Specifications and Drawings for Design

and Installation of Water and Wastewater Facilities”, all applicable DSRSD Master Plans and all DSRSD policies.

- 13.32.8.2 All mains shall be sized to provide sufficient capacity to accommodate future flow demands in addition to each development project's demand. Layout and sizing of mains shall be in conformance with DSRSD utility master planning.
- 13.32.8.3 Sewers shall be designed to operate by gravity flow to DSRSD's existing sanitary sewer system. Pumping of sewage is discouraged and may only be allowed under extreme circumstances following a case by case review with DSRSD staff. Any pumping station will require specific review and approval by DSRSD of preliminary design reports, design criteria, and final plans and specifications. The DSRSD reserves the right to require payment of present worth 20 year maintenance costs as well as other conditions within a separate agreement with the Design Build Entity for any project that requires a pumping station.
- 13.32.8.4 Domestic and fire protection waterline systems shall be designed to be looped or interconnected to avoid dead end sections in accordance with requirements of the DSRSD Standard Specifications and sound engineering practice.
- 13.32.8.5 DSRSD policy requires public water and sewer lines to be located in public streets rather than in off-street locations to the fullest extent possible. If unavoidable, then public sewer or water easements must be established over the alignment of each public sewer or water line in an off-street or private street location to provide access for future maintenance and/or replacement.

- 13.32.8.6 Prior to issuance of a Construction Permit by DSRSD or the commencement of construction, the locations and widths of all proposed easement dedications for water and sewer lines shall be submitted to and approved by DSRSD.
- 13.32.8.7 All easement dedications for DSRSD facilities shall be by separate instrument irrevocably offered to DSRSD or by offer of dedication.
- 13.32.8.8 Prior to issuance of a Construction Permit by DSRSD or the commencement of construction, all utility connection fees including DSRSD and Zone 7, plan checking fees, inspection fees, connection fees, and fees associated with a wastewater discharge permit shall be paid to DSRSD in accordance with the rates and schedules established in the DSRSD Code.
- 13.32.8.9 Prior to issuance of a Construction Permit by DSRSD or the commencement of construction, all improvement plans for DSRSD facilities shall be signed by the District Engineer. Each drawing of improvement plans shall contain a signature block for the District Engineer indicating approval of the sanitary sewer or water facilities shown. Prior to approval by the District Engineer, the Design Build Entity shall pay all required DSRSD fees, and provide an engineer's estimate of construction costs for the sewer and water systems, a performance bond, a one-year maintenance bond, and a comprehensive general liability insurance policy in the amounts and forms that are acceptable to DSRSD. The Design Build Entity shall allow at least 15 working days for final improvement drawing review by DSRSD before signature by the District Engineer.

- 13.32.8.10 No sewer line or waterline construction shall be permitted unless the proper utility construction permit has been issued by DSRSD. A construction permit will only be issued after all DSRSD fees have been paid.
- 13.32.8.11 The Design Build Entity shall hold DSRSD, it's Board of Directors, commissions, employees, and agents of DSRSD harmless and indemnify and defend the same from any litigation, claims, or fines resulting from the construction and completion of the project.
- 13.32.8.12 Improvement plans shall include recycled water improvements as required by DSRSD. Services for landscape irrigation shall connect to recycled water mains. Design Build Entity must obtain a copy of the DSRSD *Recycled Water Use Guidelines* and conform to the requirements therein.
- 13.32.8.13 If any trash enclosures are to be connected to the sanitary sewer, they must have a grease and sand trap and the areas must be covered to prevent the entry of rainwater.
- 13.32.8.14 Separation of Water and Sewer Lines shall be per the requirements of DSRSD.
- 13.32.8.15 The Project is located within the District Recycled Water Use Zone (Ord. 280), which calls for installation of recycled water irrigation systems to allow for the future use of recycled water for approved landscape irrigation demands. Recycled water will be available; as described in the *DSRSD Water Master Plan Update, September 2000*. Unless specifically exempted by the District Engineer, compliance with Ordinance 280, as may be amended or superseded, is required. Design Build Entity must submit landscape irrigation

plans to DSRSD. All irrigation facilities shall be in compliance with District's "Recycled Water Use Guidelines" and Department of Health Services requirements for recycled water irrigation design.

13.32.8.16 Plans must include profile views for the fire water line.

13.32.9 Dublin Fire Department. Prior to the start of construction, plans shall be submitted to the Dublin Fire Department for review and approval. These submittals shall include the following: building construction plans; exit plan; fire flow calculation from California Fire Code Appendix III-A as well as available fire flow (this info can be obtained from DSRSD); fire sprinkler installation plans; fire alarm installation plans. No work shall start on project until such time as the Dublin Fire Department has approved the plans. All access roads and fire hydrants shall be in place and operational prior to the start of vertical construction.

13.32.10 Alameda County Flood Control and Water Conservation District (Zone 7).

13.32.10.1 If any water wells or monitoring wells are found within the project limits, they should be reported to Zone 7. All unused or abandoned wells must be properly destroyed. Any new planned well, soil boring, or well destruction must be permitted by Zone 7 before starting the work. There are no fees for Zone 7 drilling permits.

13.32.10.2 The Design Build Entity shall comply with all Zone 7 requirements and applicable fees, unless otherwise approved by Zone 7 and/or the Director of Public Works.

13.32.10.3 Improvements creating new impervious areas within the Livermore-Amador Valley are subject to the assessment of the Development Impact Fee for Flood Protection and Storm Water Drainage. Fees are dependent on whether post-project impervious area exceeds pre-project impervious area and/or whether fees have previously been paid.

13.32.11 Dublin Police Services. The following conditions shall be complied with prior to the establishment of use and the building opening to serve the public and maintained on an ongoing basis to the satisfaction of Dublin Police Services:

13.32.11.1 The Design Build Entity shall comply with all applicable City of Dublin Non Residential Security Ordinance requirements.

13.32.11.2 Employee exit doors shall be equipped with 180-degree viewers if there is not a burglary resistant window panel in the door from which to scan the exterior.

13.32.11.3 Exterior lighting is required over all doors. The Design Build Entity shall submit a final lighting plan for approval by the City of Dublin Police Department. Lighting of all exterior areas shall be designed to maximize surveillance and reduce conflicts with building design, mature landscaping, and to minimize glare.

13.32.11.4 Security lighting shall be provided in all parking structure and site areas at 1.0 candle lights at ground level. Lighting fixtures shall be of a vandal resistant type.

13.32.11.5 Landscaping features and outdoor amenities shall be designed to reduce their attractiveness to skateboarders and vandals.

13.32.11.6 Exterior landscaping shall be kept at a minimal height and fullness giving patrol officers and the general public surveillance capabilities of the area. Shrubs and ground cover shall not directly cover windows and doorways. River rock used near parking lots or commercial buildings shall be permanently affixed.

13.32.11.7 All entrances to the parking areas shall be posted with appropriate signs pursuant to Section 22658(a) of the California Vehicle Code, to assist in

removing vehicles at the property owner's/manager's request.

13.32.11.8 The Design Build Entity shall keep the site clear of graffiti vandalism on a regular and continuous basis at all times during the design and construction phases. (The Design Builder's obligation is to comply with this requirement until Final Completion and Acceptance of the Work by the County.)

13.32.11.9 The perimeter of the Site shall be fenced during construction, and security lighting and patrols shall be employed as necessary. The Design Build Entity shall provide afterhours call-out information to Police Services on an "Emergency Response Form." All information shall be kept current and up to date at all times during the design and construction phases until Final Completion and Acceptance of the Work by the County.

13.32.12 Landscape Design must meet the following:

13.32.12.1 On-site and Off-site Landscaping must be per the conceptual plans and notes incorporated in to the Bridging documents including future deferred submittals to the City of Dublin for the final approval of the Encroachment Permit. Design Build Entity must develop full construction plans for both On-site and Off-site Landscaping work and submit to the City of Dublin for approval prior to start of construction.

13.32.12.2 The Landscape Plans must be reviewed and approved by DSRSD, as some of the plant material illustrated may not be suited for irrigation with reclaimed water. DSRSD review and approval must be completed prior to installation of the plants.

13.32.13 Public Works Standard Requirements and Approval. The City of Dublin Public Works Department is the Responsible Agency for all of the following conditions.

13.32.13.1 General: In addition to complying with the Alameda County Code of Ordinances: Title: 15-Buildings and Construction, Design Build Entity shall comply with the City of Dublin Zoning and Grading Ordinances, the City of Dublin Public Works Standards and Policies, and all building and fire codes and ordinances in effect at the time of construction. All public improvements constructed by Design Build Entity and to be dedicated to the City of Dublin are hereby identified as “public works” under Labor Code section 1771. Accordingly, the Design Build Entity, in constructing such improvements, shall comply with the Prevailing Wage Law (Labor Code. Sections 1720, et seq.).

13.32.13.2 Review and inspection of improvements by the City of Dublin Public Works Department shall be limited to improvements located within the public right-of-way or easements dedicated to the City of Dublin. The City of Dublin Public Works Department shall not have jurisdiction over design and construction of improvements located within County property. As between the City and the County, the County shall be responsible for ensuring that all improvements on County property are constructed in conformance with the County’s Final approved Plans and in conformance with any applicable codes, ordinances, or laws. In the event of conflict between these standard conditions and the project specific requirements, the project specific requirements shall apply

13.33 Submittals

- 13.33.1 All submittals of plans shall comply with the requirements of the appropriate agency having jurisdiction over the specific Permit issuance and review.
- 13.33.2 The Design Build Entity will be responsible for submittals and reviews to obtain approvals from Alameda County Public Works and all participating non-County agencies including the City of Dublin, Dublin San Ramon Services District and Bay Area Rapid Transit BART. The Alameda County Fire Department shall approve and sign the Construction Plans.
- 13.33.3 Geotechnical Preliminary Foundation Exploration Report and Geotechnical Planned Site Improvements Report - - prepared by ENGEO Incorporated has been completed as part of the Bridging Design and made available in Document 00 31 32 (Geotechnical Data and Existing Conditions). The Geotechnical Preliminary Foundation Exploration Report was limited to an initial study. A design-level exploration including supplemental laboratory testing and detailed engineering analyses should be conducted to develop design recommendations once structure loading conditions are available. As to any subsurface condition shown or indicated in the Contract Documents, the 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 to the extent provided for in Document 00 31 32 Geotechnical Data and Existing Conditions). The County is not responsible for any unreasonable opinions or conclusions drawn from such information. Compensation for unknown differing Site conditions shall be allowed as provided in the Contract Documents.
- 13.33.4 Design Build Entity shall provide the City of Dublin and the County of Alameda Public Works Department any digital copies of files as required for the submission of Plans for review and approval.
- 13.33.5 Grading Plans: The Grading Plan shall be in conformance with the recommendations of the Geotechnical Report, the final On-site construction plans and the approved Grading Permit. A detailed Erosion Control Plan shall be submitted prior to start of construction. On-site grading and erosion control plans will be submitted to the Alameda County Public Works Department for review and approval, except as needed to ensure conformance with improvements in the public right-of-way or easements, which would require City of Dublin Public Works Department review and approval.
- 13.33.6 Improvements.

- 13.33.6.1 The-improvements shall be constructed as shown on the “Off-Site and “On-Site Construction Plans dated July 29, 2021.
- 13.33.6.2 All public improvements shall conform to the City of Dublin Standard Plans and design requirements and as approved by the Dublin City Engineer.
- 13.33.6.3 The Design Build Entity shall install traffic signs and pavement marking as required by the Dublin City Engineer.
- 13.33.7 Design Build Entity shall construct all potable and recycled water and sanitary sewer facilities required to serve the project in accordance with DSRSD master plans, standards, specifications and requirements.
- 13.33.8 Fire hydrants shall be installed per the City of Dublin Fire Marshal and approved by the Alameda County Fire Department.
- 13.33.9 Street light standards and luminaries shall be designed and installed per approval of the Dublin City Engineer. Design Build Entity shall submit lighting plans including street lighting for the Project. This lighting plan shall ensure that all exterior lighting fixtures will either be oriented downward or equipped with cut-off lenses to ensure that no spillover of unwanted light onto adjacent residential areas shall occur. Two empty 3” conduits with pull ropes, to accommodate future extension of the traffic interconnect system and for School District uses, shall be installed along any project arterial street frontage. The extent of this work to be determined by the Dublin City Engineer.
- 13.33.10 Street trees, of at least a 24” box size, shall be planted along the street frontages as shown conceptually on the Off-site Construction Plans. The total numbers, varieties and locations of the trees to be approved by the City of Dublin Community Development Director and Dublin City Engineer.
- 13.33.11 Design Build Entity shall design and construct electric, and communication improvements as necessary to bring infrastructure and serve the project as required and as approved by various Public Utility agencies.
- 13.33.12 All electrical, gas, telephone, and utilities, shall be underground in accordance with the City of Dublin policies and ordinances. All utilities shall be located and provided within public utility easements and sized to meet utility company standards.

13.33.13 All off-site utility vaults, boxes and structures within the Right of Way, shall be approved by the Dublin City Engineer. All off-site utility vaults, boxes and structures shall be shown on landscape plans and approved by the Dublin City Engineer and Dublin Community Development Director prior to construction.

13.33.14 Construction:

13.33.14.1 The County is in the process of completing a Parcel map approval to subdivide Parcel D, (APN: 986-0034-013-01, Dublin, California) to two equal parcels. This building shall occupy the eastern half of the project site (roughly 2 acres), the western half shall be reserved for a future use though it may be used as a staging area during construction. The Design Build Entity is responsible for securing and maintaining the entire site Parcel D until construction is completed.

13.33.14.2 The Erosion Control Plan on the entire Parcel D-1 site shall be implemented between October 15th and April 15th unless otherwise allowed in writing by the County Public Works Agency. The Design Build Entity will be responsible for maintaining erosion and sediment control measures for one year following completion of construction.

13.33.14.3 If archaeological materials are encountered during construction, construction within 100 feet of these materials shall be halted until a professional Archaeologist who is certified by the Society of California Archaeology (SCA) or the Society of Professional Archaeology (SOPA) has had an opportunity to evaluate the significance of the find and suggest appropriate mitigation measures.

13.33.14.4 Construction activities, including the maintenance and warming of equipment, shall be limited to Monday through Friday, and non-City holidays, between the hours of 7:30 a.m. and 5:30 p.m. except as otherwise approved by

the Dublin City Engineer. The Dublin City Engineer will consider requests for work outside of these hours on a case-by-case basis (but shall not be approved for work on Sundays) and advance notice must be provided to nearby residential properties in compliance with standard Dublin City policy. Approval of the request will be consistent with standard Dublin City policy and will not be unreasonably withheld.

- 13.33.14.5 Design Build Entity shall prepare a Construction Noise Management Plan, to be approved by the Dublin City Engineer and Dublin Community Development Director, which identifies measures to be taken to minimize construction noise on surrounding developed properties. The Plan shall include hours of construction operation, use of mufflers on construction equipment, speed limit for construction traffic, haul routes and identify a noise monitor. Specific noise management measures shall be included in the Project plans and specifications.
- 13.33.14.6 The Design Build Entity shall prepare a plan for construction traffic interface with the City of Dublin Engineering Division to insure un-obstructed traffic as related to material delivery, and personnel parking as well as public traffic on any existing public street. Construction traffic and parking will be subject to specific requirements by the Dublin City Engineer.
- 13.33.14.7 The Design Build Entity shall be responsible for controlling any rodent, mosquito, or other pest problem due to construction activities.
- 13.33.14.8 The Design Build Entity shall be responsible for watering or other dust-palliative measures to control dust as conditions warrant or as directed by the Dublin City Engineer.

13.33.15 Water Quality:

- 13.33.15.1 The Design Build Entity shall provide to the City the final grading and improvement plan showing conformance to Section C.3 of the latest stormwater permit issued to the City by the San Francisco Bay Regional Water Quality Control Board. The plans shall show how the various portions of the site are treated, illustrate the connection points of the bio swales to the storm drainage system, and illustrate the means of treating roof runoff. The Design Build Entity shall provide copies of the plans showing post-construction stormwater measures and shall execute a post-construction maintenance agreement with the County to ensure long term maintenance and functionality of the system.
- 13.33.15.2 Prior to any clearing or grading, the Design Build Entity shall provide the County evidence that a Notice of Intent (NOI) has been sent to the California State Water Resources Control Board per the requirements of the NPDES. A copy of the Storm Water Pollution Prevention Plan (SWPPP) shall be provided to the Public Works Department and be kept at the construction site.
- 13.33.15.3 The Storm Water Pollution Prevention Program (SWPPP) for the operation and maintenance of the project shall identify the Best Management Practices (BMPs) appropriate to the project construction activities. The SWPPP shall include the erosion control measures in accordance with the regulations outlined in the most current version of the ABAG Erosion and Sediment Control Handbook or State Construction Best Management Practices Handbook.

13.33.15.4 The Design Build Entity is responsible for ensuring that all contractors implement all storm water pollution prevention measures in the SWPPP.

13.33.15.5 The City of Dublin Public Works Department will be responsible for reviewing the SWPPP and erosion control measures for any work located within the public right-of-way or easements. The Design Build Entity shall be responsible for maintaining on-site measures in conformance with applicable State and Federal laws regarding nonpoint stormwater quality.

14. MODIFICATIONS OF THE CONTRACT DOCUMENTS

14.1 Limitation on Change Orders

In consideration of the scope of Design Build Entity's Work, Design Build Entity will be entitled to an increase in the Contract Price or Contract Times only on account of the following: 1) a change in the Work initiated by County; 2) a change in law or regulation affecting design or construction of the Work that occurs after the Construction Documents are approved and that could not reasonably have been anticipated based upon existing law or local interpretations thereof; or 3) a differing condition or hazardous material condition that could not reasonably have been anticipated based on the Contract Documents, other information provided by County, or Design Build Entity's investigation, inspections or testing.

14.2 Alterations, Modifications and Force Account Work

14.2.1 No modification or deviation from the Contract Documents will be permitted except by written Change Order or written Field Change, collectively referred to as a "Contract Modification."

14.2.2 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 Times; delete any item or portion of the work; and require extra work. The 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 the Design Build Entity shall accept and use without payment for costs, markup, profit, or otherwise for such County-furnished labor, materials, and equipment.

- 14.2.3 Changes affecting the Contract Times or Contract Price 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 Price, if any, and the basis for compensation for the work ordered; and (c) the extent of the adjustment in the Contract Times, if any. A Change Order will not become effective until signed by the County.
- 14.2.4 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 above (Claims by Design Build Entity) and 14 (Modifications of the Contract Documents) of this Document 00 72 53, then the resulting Change Order shall be effective when signed by County, notwithstanding that the Design Build Entity has not signed it.
- 14.2.5 Changes not affecting the Contract Times or Contract Price of the Work, in the County's discretion, may be set forth in a written RFI-Reply executed by the County. Execution of a RFI-Reply or performance in accordance with the RFI-Reply without protest constitutes the Design Build Entity's agreement to make the specified change without change to the Contract Price or the Contract Times.
- 14.2.6 Changes or deviations from Contract Documents affecting the Contract Times or Contract Price shall not be made without the authority of an effective Change Order or Construction Change Directive as provided in Section 01 26 00 (Contract Modification Procedures), except in cases of emergency discussed in Section 16.4 below (Emergencies) of this Document 00 72 53.
- 14.2.7 All Contract Modifications shall be diligently carried out by the Design Build Entity in accordance with the Contract Documents. If changes ordered by County 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 the Design Build Entity and the County may agree upon as a reasonable and proper allowance 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 the Design Build Entity's rights under Article 12 above (Claims by Design Build Entity) of this Document 00 72 53. In all cases the Design Build Entity shall perform the changed work as directed by the County subject to the Design Build Entity's rights under Article 12 above. In cases where the County reaches such a determination, a Change Order shall be effective even if signed by the County only.

- 14.2.8 The Design Build Entity shall, upon the County's request, permit inspection of the original unaltered Project estimate and other documents deposited in escrow in accordance with Document 00 61 31 (Escrow Bid Documents), 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.
- 14.2.9 Changes in the Work made pursuant to this Article 14 (Modifications of the Contract Documents) and extensions of Contract Times necessary by reason thereof shall not in any way release the guarantees/warranties given by the 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.
- 14.2.10 Procedures for Modifications of Contract Documents and for calculating the cost of extra Work are given in Section 01 26 00 (Contract Modification Procedures). Regarding delay and impact costs of any nature, the Design Build Entity may not seek compensation for on-Site or off-Site costs for delay based on formulas, e.g., "Eichleay" or other formula. Rather, the Design Build Entity shall prove actual costs that were actually caused by the County caused changes or delays. If the Design Build Entity requests compensation for delay to the construction, then the Design Build Entity shall prove and document actual costs plus markup per the cost categories and procedures in Section 01 26 00 in order to request, claim or prove compensation for delay.
- 14.2.11 Change Orders in excess of the County's approved limit must be approved by the County Board of Supervisors and a performance bond rider covering the changed Work executed before proceeding with the changed Work. The Design Build Entity is charged with knowledge of the County's approved Change Order limits and procedures in effect at the applicable time.

14.3 Entire Agreement

- 14.3.1 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 this Agreement and shall constitute the exclusive statement of the terms of the parties' agreement.
- 14.3.2 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 this agreement or written modifications. The County and Design Build Entity represent and agree that they are entering into this 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.

14.4 Modifications

The Contract Documents may be amended or modified only by a written amendment, Change Order, Field Change, Construction Change Directive or directive issued in accord with the provisions of the Contract Documents, and particularly this Article 14 (Modifications of the Contract Documents) and Section 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.

15. CONTRACT TIMES

15.1 Time 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 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 the Design Build Entity's legal address.
- 15.1.2 The start date for the Contract Times shall be the date indicated in the Notice to Proceed. If no date is indicated, then the start date for Contract Times shall be the fifth Day from date that Design Build Entity receives County's written Notice to Proceed. Total number of Days for completion of Work on Contract and other Contract Times are set forth in Document 00 52 53 (Agreement).
- 15.1.3 By signing the Agreement, the Design Build Entity represents to the County that the Contract Times are reasonable for performing the Work and that the Design Build Entity is able to perform the Work within the Contract Times. Design Build Entity agrees that the County is purchasing the right to have the Design Build Entity present on the Project site for the full duration of the Contract Times applicable to the Construction Phase, even if Design Build Entity could finish the Work in less than the Contract Times.

- 15.1.4 The Design Build Entity shall not, except by agreement or instruction of the County in writing, commence operations on the Site prior to the effective date of insurance required by the Contract Documents to be furnished by the Design Build Entity.
- 15.1.5 The Design Build Entity shall proceed expeditiously with adequate forces and shall achieve all milestones within the applicable Contract Times. If the County determines and notifies the Design Build Entity that the Design Build Entity's progress is such that the Design Build Entity is unlikely to achieve one or more Milestones within the Contract Times, the 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 as may be required to ensure that the entire Work is completed in accordance with the Contract Times. Upon receipt of such notice from the County's Representative, the 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 Times. The 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 Times

- 15.2.1 The Contract Times may only be changed by Change Order 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 Times 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 other contractors performing other Work under contract with the County or its Project Partners, provided the 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 as defined in Section 13.7 above (Force Majeure).

15.2.3 The Contract Times shall not be extended for any cause identified in paragraph 15.2.2 above, however, unless:

15.2.3.1 The Design Build Entity actually has been prevented from completing any part of the Work within the Contract Times due to delay that is beyond the Design Build Entity's control and due to reasons for which the 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 the Design Build Entity);

15.2.3.2 A claim for delay is made as provided herein; and

15.2.3.3 The Design Build Entity submits a Time Impact Evaluation as required under Section 01 32 26 (Schedules and Reports) that demonstrates actual delay to Work activities on the critical path at the time the delay occurs 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 Section 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 the Design Build Entity proves that the adverse weather actually caused delay to the completion of the Project. The 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, pro-rated in the individual month the 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 (0.10) of an inch or more at the Livermore Municipal Airport station (Livermore, CA) 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 The Design Build Entity shall include the foregoing rain parameters as a monthly activity in its progress schedule. If Work on the critical path is affected by rain, the 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 the Design Build Entity proves the Substantial 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 the Design Build Entity's progress on the critical path, then no time extension shall be recognized; and conversely, if the Design Build Entity proves that rain exceeding the specified parameters causes delay to the Design Build Entity for a period longer than the number of rain days incurred (e.g., if it rains during grading work), then the 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 prevented Design Build Entity from proceeding with more than seventy-five percent (75%) of the normal labor and equipment force working on current critical path work items on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof.
- 15.3.4 The 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 the Design Build Entity could have avoided or mitigated the potential delay by exercising reasonable care.

15.4 Notice of Delay

Within seven (7) Days of the beginning of any delay or of becoming aware of any delay, whichever is later, the 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. The Design Build Entity shall comply with Section 01 32 26 (Schedules and Reports).
- 15.4.2 After receipt of a request for a time extension, with verifiable supporting documents and justifications included, the County will make a decision thereon, and will advise the 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 the Design Build Entity fails to give timely and proper notice and the 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 the 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 Evaluation as specified in Section 01 32 26 (Schedules and Reports). The County will determine all claims and adjustments in the Contract Times. No claim for an adjustment in the Contract Times will be valid and such claim will be waived if not submitted in accordance with the requirements of this Section 15.4 (Notice of Delay).

15.5 No Damage for Design Build Entity Caused Delay

The Design Build Entity shall not be entitled to any time extension or compensation, including without limitation extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any Design Build Entity caused delays.

15.6 Time Extension Without Compensation

The Design Build Entity may receive a time extension without compensation for: (a) delays resulting from causes beyond the reasonable control of the Design Build Entity and the County, including a Force Majeure (see Section 13.7 above), (b) periods of

delay caused jointly by the Design Build Entity and the County, 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 the Design Build Entity's sole and exclusive remedy for such delays.

15.7 Compensable Delay

The Design Build Entity may receive a time extension and an adjustment in the Contract Price as compensation in conformance with Section 01 26 00 (Contract Modification Procedures) for delays caused by the County or by the County's contractors, except that the 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 County, its contractors, tenants and their contractors, and their respective Subcontractors, exercised as a result of the 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 Times 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 Agreement by the Design Build Entity shall constitute acknowledgement by Design Build Entity that Design Build Entity understands, has ascertained and agrees that the County and its Project Partners will actually sustain damages in the amount fixed in the Agreement for each and every Day during which completion of a Milestone or the Work is delayed beyond the expiration of the Contract Times, as adjusted pursuant to provisions hereof. The 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 Liquidated damages may be deducted from any money due or to become due to Design Build Entity Should Design Build Entity be inexcusably delayed in the performance of the Work, County

may deduct liquidated damages based on its estimate of when Design Build Entity will achieve Final Completion or other Milestones. County need not wait until 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 damages for actual damages sustained by the County and its Project Partners 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. Liquidated damages do not include damages the County incurs on account of claims by third parties against the County.
- 15.8.4 Should money due or to become due to Design Build Entity be insufficient to cover liquidated damages or other offsets 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 Work 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 The 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. The Design Build Entity shall assume full responsibility for any damage to any such land or 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.
- 16.1.3 During the progress of the Work, the 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, the 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 and machinery and surplus materials. The

Design Build Entity shall have the Site clean and ready for occupancy by the County at Substantial Completion of Work.

- 16.1.4 The 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 the Design Build Entity subject any part of the Work structures or adjacent property to stresses or pressures that will endanger it. The 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

The Design Build Entity shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with Work. The 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. The 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, the 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 The Design Build Entity shall comply with all Applicable Laws and regulations of any public body having jurisdiction 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. The 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 The Design Build Entity shall remedy all damage, injury or loss or interruption to any property or operations referred to in this Section 16.2 (Protection of Work, Persons and Property), caused, directly or indirectly, in whole or in part, by the 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. The Design Build Entity's duties and responsibility for safety and for protection of Work shall continue until such time as all the Work is completed 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 The 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 The Design Build Entity shall insure that the Design Build Entity (and its employees, agents and invitees), Subcontractors (and each tier of Subcontractors' employees, agents, invitees), and subconsultants (and their employees, agents and invitees) while at the Site shall comply with applicable health and safety laws including, without limitation, the federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) (and all rules and regulations issued pursuant thereto), the California Occupational Safety and Health Act of 1973 (8 Cal. Code of Regs., §1 et seq. 33400 of Article 10, Group 2, Subchapter 7) and any of the County's safety regulations, as amended from time to time. The 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 Construction Protocols related to COVID-19. The Design Build Entity shall insure that the Design Build Entity (and its employees, agents and invitees), Subcontractors (and each tier of Subcontractors' employees, agents, invitees), and sub-consultants (and their employees, agents and invitees) while at the Site shall comply with the State of California Construction Safety Protocols as outlined in the state's [Blueprint for a Safer Economy](#) and is following the state's [guidance for the construction industry](#) to create a safer environment for workers and to limit the spread of COVID-19. Design Build Entity shall also comply with the most recent County of Alameda Health Ordinance related to COVID-19.
- 16.3.3 Safety of all persons employed by the Design Build Entity or Subcontractors or designers and their respective agents and invitees on the Site shall be the full responsibility of the Design Build Entity. The 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 the Design Build Entity's control. However, it shall be the 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.

- 16.3.4 Design Build Entity shall confine all persons under the Design Build Entity's employ or employ of its Subcontractors, designers or any other person acting on behalf of the Design Build Entity or Subcontractors or designers 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 or City of Dublin for ingress and egress thereto and to any other areas the County may expressly permit the Design Build Entity to use. Within such areas, except those routes for ingress and egress over which the Design Build Entity has no right of control, the Design Build Entity shall provide safe means of access to all places at which persons may at any time have occasion to be present.

16.4 Emergencies

In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, the 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 the 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 the Design Build Entity in response to such an emergency, a Contract Modification, Change Order or Field Change will be issued to document the consequences of such action.

16.5 Use of Roadways and Walkways

The 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, the 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.

16.6 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, medial 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.

- 16.6.1 Design Build Entity and its Subcontractors shall comply with Labor Code § 3073.9, which forbids certain discriminatory practices in the employment of apprentices.

16.7 Prevailing Wages

- 16.7.1 This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. The following requirements apply to this bid and contract:

- 16.7.1.1 No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

- 16.7.1.2 No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

- 16.7.2 Contractor represents that it is registered and qualified to perform public work pursuant to Labor Code § 1725.5. Contractor is required to maintain DIR registration as required by Labor Code § 1725.5, without interruption, as long as Contractor is performing work on the Project. Contractor is further obligated to ensure that subcontractors of every tier are registered with the DIR as required by Labor Code § 1725.5 as long as those subcontractors are performing work on the Project. Contractor will prohibit any unregistered subcontractor from performing work on the Project.

- 16.7.3 Pursuant to Labor Code §§1770 et seq., the Design Build Entity and all Subcontractors shall pay to persons performing labor in and about the Work an amount 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 legal holiday and overtime work in said locality, which per diem wages shall be not

less than the stipulated rates 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 this Agreement. The Design Build Entity shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at the Site. Copies of the prevailing rate of per diem wages are on file at the Alameda County General Services Agency, 1401 Lakeside Drive, Oakland, California 94612, and will be made available to any interested party upon request.

- 16.7.4 The Design Build Entity shall forfeit, as a penalty to the County, 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 or her or by any Subcontractor or designer under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the Labor Code. The sums and amounts which shall be forfeited pursuant to this paragraph 16.7.4 and the terms of the Labor Code shall be withheld and retained from payments due or to become due to the Design Build Entity under this Agreement 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. The final amount of forfeiture shall be determined by the Labor Commissioner pursuant to Labor Code § 1775.
- 16.7.5 The 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 designer 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.
- 16.7.6 The Design Build Entity stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code §1813.

16.8 Environmental Controls

The 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 shall be responsible for insuring 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 the Site or associated with the Project.

- 16.8.1 Design Build Entity shall fulfill Mitigation Measures set forth in the original Dublin Transit Center Parking Garage Project Environmental Impact Report ("EIR") dated November 19, 2002 and approved by the City of Dublin and subsequent CEQA Addendum ("Addendum") dated May 2019 (Project Manual-Reference Documents, Part -F) and approved by the County including but not limited to the following:

16.8.1.1 Seismic Hazard Zone: The project site is located in a Seismic Hazard Zone, according to maps released by the State of California. The project shall be designed and constructed by the Design Build Entity in accordance with the Seismic Hazard Mapping Act.

16.8.1.2 Presence of Hazardous Materials: The original EIR required the implementation of Mitigation Measure 4.6-1 to have the Phase I and (if required) Phase II level environmental investigations be performed for each individual development project within the proposed Transit Center prior to any grading or construction activity. Phase I Environmental Site Assessment (ESA) has been performed by the County of Alameda for the Project site. (See Project Manual- Reference Documents, Part -F). The Design Build Entity is responsible for the implementation of the Phase 1 ESA recommendations in order to satisfy the requirements of EIR Mitigation Measure 4.6-1, and ensure potential impacts from disturbance of soil contaminated with hazardous materials is mitigated, or if buried objects that contain hazardous materials during construction are encountered, their potential impact is mitigated.

16.8.1.3 Light and Glare: Ensure that lighting on the top deck of the garage is designed to minimize impacts to existing and future

development surrounding the site (including potential future residential development of the remainder of Site D and also the existing Esprit residential project). This may include reduced height for light standards, moving light standards to the center of the garage, and using light shields, or incorporating low level lighting such as bollards. The Design Build Entity shall ensure Mitigation Measure 4.1-2 is implemented and a lighting plan is submitted to the County and the City of Dublin prior to construction.

16.8.1.4 Violation of Air Quality Standards:

16.8.1.4.1 Mitigation Measure: Reduction of Dust during Construction. Project will be required to comply with all construction-period dust reduction measures as specified in Amended Mitigation Measures 4.2-1.

16.8.1.4.2 Mitigation Measure: Diesel Emissions Control: An emission-reduction program is required as part of the Design Build contract. That program will require retrofitting of older diesel engines with Level 3 diesel particulate filters, or use of Tier 4 diesel engines that already incorporate Best Available Control Technologies, or equivalent. The particulate filter requirement is necessary to ensure that health risks associated with construction activities remain less-than-significant.

16.8.1.5 Special Status Species:

16.8.1.5.1 Mitigation Measure 4.3-3 (burrowing owl): The following measures will reduce potential impacts to burrowing owls to a less-than-significant level.

a) Pre-construction surveys by a qualified biologist shall be conducted on the entire Project area and within 150 meters (500 feet) of the Project area within 30 days prior to any ground disturbance. If ground disturbance is delayed or suspended for more than 30 days after the preconstruction survey, the site shall be resurveyed.

b) If over-wintering birds are present (September 1 to January 31) no disturbance should occur within 160 feet of occupied burrows unless the Department of Fish and Game provides a letter giving consent to relocate wintering birds. If owls must be moved away from the disturbance area, passive relocation techniques, following CDFG 1995 guidelines, should be used rather than trapping. If no overwintering birds are observed, burrows may be removed prior to the nesting season to reduce impacts from noise, dust, and human disturbance to mated pairs.

c) If removal of unoccupied potential nesting burrows prior to the nesting season is infeasible and construction must occur within the breeding season, maintain a minimum buffer (at least 250 feet) around active burrowing owl nesting sites identified by preconstruction surveys during the breeding season to avoid direct loss of individuals (February 1 - September 1). All active burrows shall be identified.

d) If construction is scheduled during summer, when young are not yet fledged, a 250-foot exclusion zone around the nest shall be established or construction shall be delayed until after the young have fledged, typically by August 31.

e) When removal of occupied burrows is unavoidable, existing unsuitable burrows should be enhanced (enlarged or cleared of debris) or new burrows created (by installing artificial burrows) at a 2:1 ratio on protected lands, as provided for below.

f) A minimum of 6.5 acres of foraging habitat per pair or unpaired resident bird shall be acquired and permanently protected. The protected lands shall be adjacent to occupied burrowing owl habitat and at a location acceptable to CDFG.

16.8.1.5.2 EIR Mitigation Measure 4.3-1 (Congdon's spikeweed): The following mitigation measure is required to mitigate the loss of a

population of Congdon's tarplant (also known as spikeweed):

a) The size of any portion of the Project area occupied by the tarplant should be determined from field surveys and notes on past on-site distribution, measuring the entire area from which the plant has been observed. If the plant is present and on-site avoidance is not possible, one of the following options must be taken to ensure replacement on a 1:1 acreage ratio:

b) Option "A": Permanently preserve, through use of a conservation easement or other similar method, equal amount of off-site acreage that contains the plant; or:

c) Option "B": Harvest seeds from on-site plants to be lost or from another source within the Livermore-Amador Valley, and seed an equal amount of off-site area suitable for supporting the plant, which shall be preserved and protected in perpetuity.

d) The Design Build Entity shall demonstrate to the County how they will comply with this mitigation measure, including the steps they will take to ensure that reseedling will be successful. If Option "B" is selected and is not successful, Option "A" shall be implemented.

16.8.1.6 Historic and Archaeological Resources and Human Remains - Mitigation Measure 4.4-1: If, during construction of individual development projects within the Transit Center, archeological, discrete historical or Native American artifacts are encountered, work on the project shall cease until compliance with CEQA Guidelines Section 15064.5 is demonstrated.

16.8.1.7 Seismic Ground Shaking, Liquefaction and Landslides: Mitigation Measure 4.5-1 and Mitigation Measure 4.5-2: The referenced Geotechnical Preliminary Foundation Exploration Report and Geotechnical Planned Site Improvements Report reduce these

potential geologic impacts to a less-than-significant level.

16.8.1.8

Erosion: Mitigation Measure 4.7-3: Design Build Entity shall prepare an erosion and sedimentation control plan for implementation throughout project construction. The plan should be prepared in accordance with City of Dublin and RWQCB design standards. It is recommended that this plan, at a minimum, include the following provisions:

- a) Existing vegetated areas should be left undisturbed until construction of improvements on each portion of the development site is actually ready to commence;
- b) All disturbed areas should be immediately revegetated or otherwise protected from both wind and water erosion upon the completion of grading activities;
- c) Stormwater runoff should be collected into stable drainage channels, from small drainage basins, to prevent the buildup of large, potentially erosive stormwater flows;
- d) Specific measures to control erosion from stockpiled earth and exposed soil;
- e) Runoff should be directed away from all areas disturbed by construction;
- f) Sediment ponds or siltation basins should be used to trap eroded soils before runoff is discharged into on-site or offsite drainage culverts and channels.
- g) To the extent possible, project sponsors should schedule major site development work involving excavation and earth moving for construction during the dry season.

- 16.8.1.9 Risk of Upset: Mitigation Measure 4.6-2 requires all construction of residential developments on Sites A and C adjacent to the Iron Horse Trail right-of-way to include flags to prevent heavy equipment from crossing over the petroleum pipeline and fiber optic cable. Construction materials and equipment is not to be stored on top of the right-of-way, and future residential development within the DTC shall maintain a minimum setback of 50 feet from the petroleum pipeline to the nearest habitable residential structure.
- 16.8.1.10 Water Quality Standards: Mitigation Measure 4.7-2: The Design Build Entity shall prepare a stormwater Pollution Prevention Plan (SWPPP) that incorporates Best Management Practices (BMPs) for construction and post-construction conditions. The SWPPP shall be prepared to Regional Water Quality Control Board standards in effect at the time permits are requested. The SWPPP shall include, but is not limited to incorporation of grassy swales into landscaped areas, use of fossil filters, covering of solid waste and recycling areas and similar features.
- 16.8.1.11 Construction Noise Impacts: Mitigation Measure 4.9-1: The Design Build Entity shall submit a Construction Noise Management Plan that identifies measures to be taken to minimize construction noise on surrounding developed properties, particularly residential developments. In addition to the above, the Design Build entity must comply with all sections of the Mitigation Measure 4.9-1 as amended and noted in the Final CEQA Addendum.
- 16.8.1.12 Police Services: Mitigation Measure 4.12-2: The Design Build Entity shall submit a safety and security plan for the approval of the Police Chief. Safety and

Security Plans shall include but not be limited to provision for private security measures, methods to achieve coordination with the Dublin Police Services Department and other items as deemed important by the Dublin Police Services Department

16.8.1.13 Prior EIR Mitigation Measure 4.2-1 (as amended): The Design Build Entity shall comply with the following construction-period BBPS (Best Business Practices) for all construction work pursuant to this Project:

a) All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.

b) All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

d) All vehicle speeds on unpaved roads shall be limited to 15 mph.

e) All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

f) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

g) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.

h) Post a publicly visible sign with the telephone number and person to contact at the County regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

16.8.2 Hazardous Waste or Materials Disposal.

16.8.2.1 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 review consistent with the Contract Documents.

16.8.2.2 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.

- 16.8.2.3 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 and 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, the 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, the Design Build Entity shall submit shoring plans to County and Other Authorities Having Jurisdiction as required. The Design Build Entity shall allow adequate time for County and Other Authorities Having Jurisdiction review and approval of all plans.
- 16.9.3 During the course of the Work, the 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 the Design Build Entity of its responsibilities under this Section 16.9 (Shoring Safety Plan).

END OF DOCUMENT