



# COUNTY OF ALAMEDA

## ADDENDUM No. 2

### 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](http://www.acgov.org/gsa/purchasing/bid_content/ContractOpportunities.jsp).

**Issue Date: October 29, 2021**

**FROM:**

County of Alameda - GSA/TSD  
1401 Lakeside Drive, Suite 800  
Oakland, California 94612  
Hadi Hadjarzadeh, Project Manager  
Phone (510) 220-3445  
Fax (510) 208-3995

**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.

**County of Alameda, General Services Agency – Purchasing**  
**RFP No. 900977, Addendum No. 2**

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. Please note the **Proposal Due Date** in Document 00 11 19 has been extended to **November 15, 2021.**

Document Number	Document Title	Date
00 11 19	Request For Proposals (RFP)	Same as Addendum #2
00 52 53	Design Build Template Agreement	Same as Addendum #2
00 62 38	<u>Enhanced Construction Outreach Program (ECOP)</u>	Same as Addendum #2
00 72 53	General Conditions	Same as Addendum #2
01 32 26	Schedules and Reports	Same as Addendum #2
01 41 00	Regulatory Requirements	Same as Addendum #2
00 73 16	Insurance Requirements	Same as Addendum #2

Revisions are shown as follows: additions are underlined; deletions are struck-through; and all affected portions of a document are clouded. Please also refer to revisions noted on the reissued/revised drawings that are not noted above and is posted with Addendum #2 as a link. For this posting, all documents issued with this Addendum # 2 will carry the same date as the Addendum #2 regardless of the date noted on those documents.



Alameda County is committed to reducing environmental impacts across our entire supply chain. If printing this document, please print only what you need, print double-sided, and use recycled-content

## Responses to Written Request for Information

- Q1)** *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. 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.*
- A1)** **This question was partially addressed in Addendum #1, Q/A # 21 . The County's Environmental consultant, WRA, Inc. performed a survey which addresses the EIR compliance requirement regarding "Rare Plants" and "Western Burrowing Owl" and states: "There is no potential for rare plant species to occur within Parcel D-1 due to the high level of disturbance and absence of suitable habitat. Western burrowing owls are unlikely to occupy the parcel in the future; however, a burrowing owl pre-construction survey will be required prior to any ground disturbance". The pre-construction burrowing owl survey will be conducted by the Owner prior to construction. A copy of the WRA survey can be found in Addendum #2 Referenced materials.**
- Q2)** *Please advise if the project is to comply with any "Buy America (n)" clauses*
- A2)** **The contract terms and requirements for this project are set forth in the RFP published on 07/30/2021.**
- Q3)** *General Conditions 00 72 53 section 13.3.2 – Consistent with California Civil Code section 2782.8, will the owner please limit Design Build Entity's indemnity and defense obligations for design claims only to the extent of Design Build Entity's negligence, recklessness, or willful misconduct?*
- A3)** **Please see Section 14 of Document 00 11 19 Request for Proposals from Design-Build Entities.**
- Q4)** *Per General Conditions 00 72 53 section 13.20.1 states that the county owns the design, and it could be reused without future approval. Please confirm that the county will release liability or indemnify the DBE if the county reuses the designs or details on other projects?*
- A4)** **Please see Section 14 of Document 00 11 19 Request for Proposals from Design-Build Entities.**

**County of Alameda, General Services Agency-Procurement**  
**RFQ No. - Project No.18124, Addendum No. 2**

- Q5)** *Per General Conditions 00 72 53 section 13.20.1 the Design Build Entity (DBE) 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 request of the County. DBE will provide the Owner as-built drawings and documents per the project closeout requirements noted in specification 01 77 00 at substantial completion. Please confirm that this is acceptable in-lieu of being able to provide the documents to the owner for a period up to ten (10) years?*
- A5)** **Please see Section 14 of Document 00 11 19 Request for Proposals from Design-Build Entities.**
- Q6)** *The RFP and contract documents require a competed, firm fixed price. Please confirm that the awarded party will not be required to comply 2 CFR 200, including without limitation to the cost principles and audit requirements, as these do not apply to fixed price procurement per Table 1 of 2 CFR 200 (see attached excerpt of table 1)?*
- A6)** **Please see Section 14 of Document 00 11 19 Request for Proposals from Design-Build Entities.**
- Q7)** *Per General Conditions 00 72 53 section 13.23 - any applicable statute of limitations shall commence to run no sooner than the date of issuance by the County of the final Certificate for Payment. This is not typical for projects. Please confirm that statute of limitations shall commence when project final completion certificate is received?*
- A7)** **Please see Section 14 of Document 00 11 19 Request for Proposals from Design-Build Entities.**
- Q8)** *Waiver of Consequential Damages: Will Owner please add a mutual waiver of consequential damages?*
- A8)** **Please see Section 14 of Document 00 11 19 Request for Proposals from Design-Build Entities.**
- Q9)** *Please confirm that title transfer of project including all insurance requirements will occur after Final Completion / beneficial occupancy of the project or whichever occurs earlier?*
- A9)** **Please see Section 14 of Document 00 11 19 Request for Proposals from Design-Build Entities.**
- Q10)** *Applicable codes conflict between BOD and Regulatory Requirements 01 41 00. Please clarify which document.*
- A10)** **The Regulatory Requirements noted in Document 01 41 00 section 1.3.1 are a sample of codes which apply to the Contract Documents, but they are not limited to those included in the RFP. DBE shall confirm final list of all applicable codes. Please also refer to the revised sections of the BOD and Document 01 41 00. Architect Of Record and Engineer Of Record**

**County of Alameda, General Services Agency-Procurement**  
**RFQ No. - Project No.18124, Addendum No. 2**

**who seal/sign drawings will be responsible for submitting documents per all applicable codes.**

**Q11)** *Per sheet C-401 Utility Construction Notes, SDR Storm Drain states that it is a 48" HDPE SDR11 storm drainpipe. However, the piping shown on the plans shows the pipe as 42". Please clarify whether the pipe size is 42" or 48"?*

**A11)** **The pipe is 48" and is shown in the revised plans.**

**Q12)** *Per the Basis of Design Division 16: Electrical item 3 (lighting) the performance criteria for the general garage lighting is to be waterproof LED strip fixtures providing 2,700k to 3,000k color profile (warm white). In our experience there are many light fixtures that meet this description but do not meet industry standard Illuminating Engineering Society (IES) recommendations for control, which results in issues with visual comfort (glare), unintended light egress out of the garage, etc.*

*Parking garage fixtures are designed to comply with and exceed the IES recommendations by providing superior light output control and flexibility in configuration to suit the application. These designs require fewer fixtures for an Owner to maintain, and more evenly distributed lighting for a more comfortable environment for the end user.*

*It may be a liability to the Owner if IES recommended practices are not required to be followed.*

*Please clarify if we are to provide a design with parking garage specific light fixtures that complies with IES recommendations as part of the performance criteria in the BOD?*

**A12)** **DBE shall provide a design with parking garage specific light fixtures that complies with IES recommendations.**

**Q13)** *Sheet C-401 show conceptual path of the PG&E No. 7 vault (U3). Please clarify that the PG&E and the Owner will furnish and install the conduits, wire and electrical gear up to and including PG&E No. 7 vault (U3) and that the Design Build Entity (DBE) will connect to the PG&E No. 7 vault (U3) to provide power to the new parking structure? If No, please provide PG&E Engineered drawings for pricing?*

**A13)** **There is no joint trench design. Design Build Entity will need to coordinate design and installation of service with PG&E. Design Build Entity to furnish all necessary trenching, conduit and electrical connections that will not be furnished by PG&E to establish electrical service. For bid purposes assume that the Design Build entity will need to provide any necessary trenching / conduits on County Property to access Vault 7 or wherever the PG&E service / point of connection will be. Further assume PG&E will be responsible for all customary electrical work up to and including the service, and the Design Build entity will be responsible for electrical connections from the service to the building.**

**County of Alameda, General Services Agency-Procurement  
RFQ No. - Project No.18124, Addendum No. 2**

*Q14) Sheet C-401 show conceptual path of the PG&E No. 7 vault. Please clarify that the AT&T and the Owner will furnish and install the utility box, conduits, wire and telecom equipment up to and including AT&T pullbox (U2) and that the Design Build Entity (DBE) will connect to the AT&T pullbox (U2) to provide telecommunication to the new parking structure?*

**A14) See response above, substitute AT&T for PG&E.**

*Q15) Per Agreement Form 00 52 53 paragraph 3.6.2.1 it states that if the Design Builder fails to complete 100% Design Development (DD) Documents within the time specified in paragraph 3.3 (43 days of the date of the County's notice to proceed), Design Builder shall pay County as liquidated damages the following sums of money per Day for each Day the actual time for Design Builder's completion of 100% Construction Documents exceeds the Contract Time (\$3,000 per Day). Please clarify if the DBE fails to meet the 43 days for 100% DD, but meets the 146 days for completion of the 100% CD documents will the DBE be released from paying the liquidated damages?*

**A15) The duration set for the Design Builder's completion of the 100% Design Development Documents is intended as a milestone to reach the timely completion of the 100% Construction Documents. The final schedule will need to be developed by the Design Builder and approved by the County's Project manager during the design phase. The liquidated damages will apply to each Day the actual time the Design Builder's completion of 100% Construction Documents exceeds the Contract Time.**

*Q16) Per Agreement Form 00 52 53 paragraph 3.4 and paragraph 3.6 milestone schedule duration are tied to their corresponding liquidated damages if the DBE fails to meet these durations. Please clarify that the DBE will be released from paying liquidated damages for delays caused by entities that are beyond the control of the DBE (Owner, county of Alameda, City of Dublin, Dublin Fire Department, etc.)?*

**A16) Please refer to Section 00 72 53 General Condition, sub-section 15: Contract times.**

*Q17) Per Section 01 42 16 Definitions, contract is defined to intend Calendar Days in all mention of duration unless defined otherwise in specific sections. Similarly, Section 00 52 53 paragraph 3.2 assigns the responsibility of time frames for required approvals from all AHJs to the DBE and paragraph 3.4.3 places the completion of 100% CDs at 146 Calendar days from NTP. Likewise, Section 01 11 20 paragraph 1.6.7, places the compliance to codes, regulations and requirements within the CD Phase. Is it the intent to include the variable time duration of the several AHJs submittal, review, response and approval/acceptance of the 100% CDs within the noted 146 Calendar days? Since Section 00 11 19 places the Design and Construction schedule as both as Pass/Fail factor (paragraph 13.2) and a scored factor (paragraph 13.3.5) would the*



**County of Alameda, General Services Agency-Procurement  
RFQ No. - Project No.18124, Addendum No. 2**

*County instead provide assumed time frames for the Permitting phase of the project to more appropriately evaluate DBE Schedules?*

- A17) Please see revised section 00 52 53 paragraph 3.4.3 for the revised completion duration of 100% Construction Documents to 150 Calendar days. The milestone completion of 100% Construction Documents includes the total duration of plan review and approval of County Building Department for the final construction approval. Design Builder shall refer to the County's proposed sample Project Schedule in PART- 4 of section 01 32 26 (also attached as a separate PDF in Addendum #2 Referenced materials.) for an approach to break the 100% Construction Documents to two separate Packages (Foundation package #1 and Shell/TI Package #2) to accelerate the start of Foundation work. The Pass/Fail factor of Section 00 11 19 (paragraph 13.2) is intended for meeting the overall schedule requirement, and the scored factor (paragraph 13.3.5) is intended for evaluating how each of the Design Build Entities can accelerate the overall Project schedule by aligning various activities.**
- Q18) Document 00 62 38 ECOP, paragraph 1.3 states that by submitting a bid, Bidders acknowledge and agree to all Document 00 22 19 provisions contained herein. However, Document 00 22 19 is not included in the RFP documents. Please provide Document 00 22 19.*
- A18) Please see revised section 00 62 38 with all references to Document 00 22 19 changed to the correct reference Document 00 62 38 ECOP.**
- Q19) BOD indicates the Project is to be constructed to achieve Parksmart Silver at minimum; whereas Section 01 81 13 paragraph 1.6 requires Parksmart Gold at minimum and General Conditions requests Add Alternate #5 for the requirements associated with Parksmart Gold certification. Please clarify which Parksmart Level should be included as a minimum. Additionally, please clarify Section 01 81 13 paragraphs 1.6.2.1 - 1.6.2.6 are not required on this Project as these seem to be applicable only to LEED rating system and do not exist on the Parksmart rating system.*
- A19) The first part of this question was answered in Addendum #1, Q/A # 17. Section 01 81 13 paragraph 1.6.2.1 apply to light pollution credit and 1.6.2.6 refers to having LEED™ Accredited Professionals on the Design and Construction team for Innovation Credit. They both apply towards achieving a Parksmart Gold certification.**
- Q20) Per Insurance 00 73 16 the General Liability and Auto Liability minimum insurance limits are \$5 Million per occurrence. These high insurance limits will be problematic for subcontractors with limited scopes on the project, for example fire extinguisher, ceramic tile, toilet partitions, etc. It also states in paragraph 8 that at the sole discretion of the County, such limits for subcontractor coverage may be reduced based on size and scope of the subcontract. Please clarify: (a) the maximum subcontract values which qualifies for the reduced insurance limits and (b) the lowered insurance minimum coverages?*

**County of Alameda, General Services Agency-Procurement  
RFQ No. - Project No.18124, Addendum No. 2**

- A20)** Please see revised Section 00 73 16 – Insurance for General Liability and Auto Liability minimum insurance requirements for subcontractors with limited scopes on the project.
- Q21) General Conditions 00 72 53 section 13.32.8 refers to complete improvement plans shall be submitted to the Dublin San Ramon Services District (DSRSD) to conform to the requirements of the DSRSD code. Please provide the DSRSD documents?*
- A21)** The on-site and off-site civil, landscaping and utility construction documents (included in the Bridging documents) have been submitted to the Dublin San Ramon Services District (DSRSD) for preliminary review. The DSRSD review comments have been incorporated into the revised Bridging Documents posted with this Addendum and provided in the reference section of the documents.
- Q22) General Conditions 00 72 53 section 13.32.10 refers to Alameda County Flood Control and Water Conservation District (Zone 7) and that the DBE shall comply with all Zone 7 requirements and applicable fees. Please provide Zone 7 requirements and fees?*
- A22)** The requirements of the “Alameda County Flood Control and Water Conservation District (Zone 7)” can be found on: <https://www.zone7water.com/permits-fees>. Everything from connection fee rates to flood protection ordinances are noted on the District’s website. The Design Build Entities are required to comply with Zone 7 requirements.
- Q23) Please clarify if the security cameras will be connected by either CAT5, CAT6 cabling or fiber optics?*
- A23)** The County’s standard is CAT6 cabling.
- Q24) Per Specification section 00 72 53 General Conditions section 9.10, mentions 2-year warranty maintenance requirements after substantial completion. This is typically done for more complicated buildings or hospitals not for Parking structures where the systems are simpler. Please confirm that the 2-year maintenance requirement after substantial completion is not applicable for this parking structure project.*
- A24)** This is a County standard for all its buildings and required as per section 00 72 53 General Conditions section 9.10.
- Q25) General Conditions 00 72 53 section 13.32.6 refers to DBE entering into an Improvement Agreement with the City of Dublin. Please provide the City of Dublin Improvement Agreement?*
- A25)** The purpose and the requirements of the Improvement Agreement with the City of Dublin is for the Off-site work and is outlined in the same section of General Conditions 00 72 53. A sample of a typical agreement is attached in the Addendum# 2 Reference materials .
- Q26) Per General Conditions 00 72 53 section 2.10.18 – The standards provided for in this section require us to utilize the highest standard of excellent design, engineering and construction. This*



**County of Alameda, General Services Agency-Procurement  
RFQ No. - Project No.18124, Addendum No. 2**

*is a higher standard than we are unlikely able to flow down to our designer partners. Please clarify that the standard of care for the DBE per GC 2.10.19 will be utilized for this project?*

**A26) This is a standard of the County for all its buildings. Please refer to General Conditions 00 72 53 section 2.10.18.**

**Q27)** *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.*

**A27) This question was partially answered in Addendum # 1, Q/A # 22. Attached in the Addendum #2 Reference materials is the County's final marked-up responses to the City of Dublin plan review comments that delineates with the City what is the responsibility of the Bridging Design team and what is deferred to the Design Build Entity to address before the start of construction. The revised Addendum # 2 Plans have incorporated the City's second round of review comments associated with the Encroachment Permit into the final design. The Design Build Entity must comply with the City of Dublin Encroachment Permit requirements and shall provide the following Plans for City of Dublin review and approval prior to start of construction:**


- a. Landscape plan**
- b. Joint trench plan**
- c. Street lighting plan, on the project side of the street which shall include proposed lighting, adjacent existing street lighting as well as street lighting facing the future proposed Westin Hotel project**
- d. Photometric plan**
- e. Stormwater management plan, including trash capture at stormwater inlets within the public right-of-way along the project frontages**
- f. Composite plan, which shall include overlay of all improvements, landscaping and utilities, existing to remain and proposed**
- g. Earthwork quantity table**
- h. SWPPP and NOI with WDID number required prior to issuance of encroachment permit.**
- i. Show location of connection of joint trench at north side of Martinelli Way.**

**Please also see Section 13.28 of Document 00 72 53 General Conditions for additional requirements.**

**Q28)** *Per Addendum #1 RFI answer A23 that the City Water pressure is provided with the Addendum #1 as reference material. Addendum #1 did not include the City Water pressure, please provide this information.*

County of Alameda, General Services Agency-Procurement  
RFQ No. - Project No.18124, Addendum No. 2

A28) The preliminary City water pressure information we have received from DSRSD is shown below and included in the Addendum # 2 Reference materials.

**Dublin San Ramon  
Services District**  
*Water, wastewater, recycled water*

7051 Dublin Blvd., Dublin, CA 94568  
**WATER PRESSURE REQUEST FORM**  
Email to [PlanSubmittals@dsrsd.com](mailto:PlanSubmittals@dsrsd.com)

<b>REQUESTOR INFO:</b>		<b>Date of Request*</b> 07/02/2020	
<b>Company</b>	KPFF Consulting Engineers		
<b>Contact Name (First and Last)</b>	Ryan Beaton	<b>Email</b>	ryan.beaton@kpff.com
<b>Phone</b>	415-268-1087	<b>Fax</b>	
<b>Tract AND Lot #s/OR Street Address**</b>	Martinelli Way & Campus Drive APN 986-34-13-1	<b>Commercial</b> <input checked="" type="checkbox"/>	<b>Residential</b> <input type="checkbox"/>

\*Normal turnaround is five (5) days from date of request.  
\*\* RESIDENTIAL REQUESTS: Location MUST include either Tract and Lot Number(s), or Street Address with number. We cannot accurately predict pressure without this complete information.

---

**DSRSD Staff Use Only**

**Date Due:**

In response to your request, we ran our hydraulic model to determine water pressures at the above noted location. The results are as follows:

**Potable Water:**

Static Pressure	74	psi		
Residual Pressure	69	psi at a flow of	2500	gpm

**Recycled Water:**

Static Pressure		psi		
Residual Pressure		psi at a flow of		gpm

**Additional Notes/Comments:**

Disclaimer: Actual water pressures may vary depending on delivery pressures from water wholesaler (Zone 7), system demands, and the dynamic status of facilities. This information does not relieve Requestor of responsibility to perform due diligence. Actual field test is recommended.

**Date of Response** 8/12/2020      **Response Provided By** Ryan Pendergraft  
**Phone** (925) 875-2242      **Email** [pendergraft@dsrsd.com](mailto:pendergraft@dsrsd.com)

Q29) Per Addendum #1 RFI answer A32 it states that the Distributed Antenna System (DAS) for the cell phone booster system will also be used for the Emergency Responder Radio Communication System (ERRCS). From our experience the local fire department or first responders want to have a separate system that is not shared with public use. Please confirm that the local fire department plan checker has accepted that the DAS cell phone booster system will be used by the local fire department and first responders?

A29) The cell phone booster is intended to boost 4G LTE & 5G for all U.S. & Canadian Networks to ensure acceptable cell phone coverage with all major carriers throughout the building. It is also intended to be used for parking system and charger equipment that need to connect to a network provider. It is not intended for the local fire department or first responders use, and if they require a separate system, please incorporate their requirement into your proposal.


**County of Alameda, General Services Agency-Procurement**  
**RFQ No. - Project No.18124, Addendum No. 2**

- Q30) *Specification 32 13 13 Site Concrete (off-site civil) states in paragraph 2.8,A introduce color pigment as specified by the manufacturer and of the color as shown on the Landscape Architects plans. Landscape drawing L-101 states sidewalk pavement per City standard color and finish. City of Dublin standard details CD-302 and CD-303 does not state the color for the sidewalks. Please provide the color type and manufacture for the sidewalks?*
- A30) **Sidewalk concrete color pavement is a requirement of the City of Dublin Public Works and will be determined prior to the start of construction. Design Build Entities shall assume integral pigments for the purpose of pricing this work.**
- Q31) *Per Doc 00 62 38 ECOP paragraph 7.3 ECOP Form 101A, 101B, 102A, 102B and 102C is provided separately as Excel fillable forms. The bid documents did not provide these Excel forms, please provide them.*
- A31) **Please see the PDF version of ECOP Forms 101A,101B, 102A, and 102B attached to this Addendum #2 and the Excel forms included in the Addendum #2 Reference folder.**
- Q32) *If a work category does not have a qualified MBE, WBE, LBE & SLBE in that category, will the cost for that work category including indirect cost be deducted from the total contract amount to determine the MBE, WBE, LBE & SLBE participation for the project?*
- A32) **No the cost for that work category including indirect cost cannot be deducted from the total contract amount to determine the MBE, WBE, LBE & SLEBparticipation for the project.**
- Q33) *Noting that Addendum 01 Answer #18 does not waive the use of FEMP BLCC program for determining comparisons, could the County clarify the requirement for the Life Cycle Analysis? We interpret that the spaces to be analyzed in the comparison only includes the Office, the Public Restrooms, the Private Restrooms and the Breakroom, since the building is designed as an Open Parking Garage that does not have an ASHRAE base standard. If so, it is our experience that the VAV mini-split system required in the BOD to vent these spaces is already an efficient system and due to the low Square Footage associated, a Life Cycle Assessment is not prudent during this Pursuit phase. Will the County consider removing the Life Cycle Assessment in the pursuit phase of the project and discuss with the DBE if this analysis is in the best interest for the project?*
- A33) **The Building Life Cycle Costs Analysis is not limited to mechanical systems. While the mechanical system in this building is minimal, BLCC analysis is a County requirement both for achieving its Sustainable Design standards and as part of Parksmart certification requirements.**
- Q34) *Per document 00 62 38 ECOP this project has a 60% local business enterprise goal (LBE). For design-build parking structure projects up to 25% of the cost resides in the indirect costs, supervision, design and contingencies, which has limited potential to include three qualified subcontractors for those costs. We are committed to including local designers, suppliers, and rental agencies where possible, but the ECOP plan goals and forms only appear to allow*

**County of Alameda, General Services Agency-Procurement**  
**RFQ No. - Project No.18124, Addendum No. 2**

*subcontractors. Will the County reduce the LBE goal to 50% of total contract value or base percentages off of direct cost of work rather than total contract value?*

- A34)** Please refer to section 4.3 and 4.4 of document 00 62 38. These are County's requirements and cannot be waived.
- Q35)** *On sheet A-201 calls out for a "fence and gate to separate LAVTA vehicles" at grid line 12 and D. Please provide criteria and/or details of the fence & gate including height, type of material and finish.*
- A35)** Please refer to the revised drawings issued with Addendum #2 for clarifying note added to drawings.
- Q36)** *On sheet L-101 and A-102 shows permanent fence and gates "outside" the parking garage along west side and turns at the north side. Please confirm the location of the fence and gates are correct. Additionally, please provide criteria and/or details of the fence & gates including height, type of material and finish.*
- A36)** The fence is to be 6 feet high chain link with a galvanized finish. Gates and adjacent fence at each side of gate and for a distance of 10 feet on the adjacent long runs are to be vertical galvanized steel tubes and bars. The gates at each end shall have panic hardware with security guard around hardware.
- A37)** *Please provide power requirement for LAVTA vehicle docks and chargers.*
- Q37)** Please see below and the Addendum #2 Referenced materials which includes both the LAVTA vehicle charging information and the Site Preparation requirements for Chargepoint Chargers that must be incorporated into the base scope. Also, please refer to Basis of Design for additional information.




Hybrid Power

Datasheet    Version 0.2    18-08-2020

## 36 kW Charge Station

- Innovative in Energy & Power Electronics
- Custom-made solutions
- Complete solution: Power Electronics
- Design and system integration



### Features

- 36 kW charge power
- Rated current up to 120A
- Galvanic isolation
- Ground fault detection/Isolation monitoring
- Optional: Connection standard: IEC62196
- Optional: Charging standard: IEC 61851-1/23/24 (mode4)
- Main contactor with pre-charge
- DC-switch at output side
- CAN interface, HMI optional
- Voltage-, current- and power control modes

### Applications

- Charging electric vehicles
- Charging automatic guide vehicles
  - Maritime
  - Industrial
  - Combination diesel-electric, fuel cell & batteries

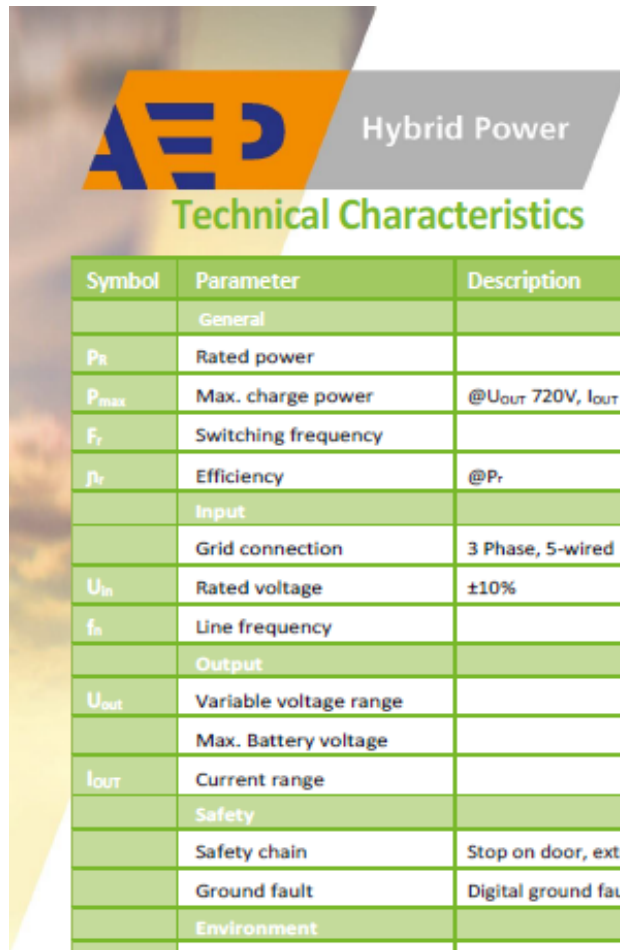
### Mechanical Data

Height x Width x Depth  
1305 x 600 x 500 mm  
Approx. 350 kg

aephybridpower.com  
sales@aephybridpower.com  
+31 (0)78 692 2100



**County of Alameda, General Services Agency-Procurement**  
**RFQ No. - Project No.18124, Addendum No. 2**



## Technical Characteristics

Symbol	Parameter	Description	Value	Unit
	General			
P <sub>R</sub>	Rated power		36	kW
P <sub>max</sub>	Max. charge power	@U <sub>OUT</sub> 720V, I <sub>OUT</sub> 50A, D 100%	40	kW
F <sub>r</sub>	Switching frequency		12	kHz
η <sub>r</sub>	Efficiency	@P <sub>r</sub>	>95	%
	Input			
	Grid connection	3 Phase, 5-wired		
U <sub>in</sub>	Rated voltage	±10%	480	V <sub>AC</sub>
f <sub>n</sub>	Line frequency		50 / 60	Hz
	Output			
U <sub>out</sub>	Variable voltage range		0 – 550	V <sub>DC</sub>
	Max. Battery voltage		550	V <sub>DC</sub>
I <sub>OUT</sub>	Current range		Up to 120	A
	Safety			
	Safety chain	Stop on door, external (hard-wired)		
	Ground fault	Digital ground fault monitoring		
	Environment			
T <sub>o</sub>	Operating temperature		-20 till 35	°C
T <sub>s</sub>	Storage temperature		-20 till 60	°C
	Cooling type	Forced air cooling		
	Communication			
	Data	No external CAN (Only used internally – NO customer CAN terminal)		
	Control signals	ON/OFF; Emergency stop		
	HMI	10" Touch Panel		
	Firmware	New Firmware installed for CCS charging		
	Controller Board	Retrofitting of a controller board		
	Connections			
	Plug	AC CCE (63A) Plug on the left side		
	Cable	<ul style="list-style-type: none"><li>5m AC cable (63A, CCE compatible)</li><li>6m DC charging cable with bracket on right side</li></ul>		

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](mailto: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 November 15, 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
--	------------------------------

- 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>
	<b>Total</b>	<b>100</b>

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 52 53

**AGREEMENT**

FOR DESIGN BUILD SERVICES  
ON THE  
**Dublin Transit Center Parking Garage Project**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by and between [DESIGN BUILDER] whose place of business is at [ADDRESS] hereinafter called ("Design Builder"), and the COUNTY OF ALAMEDA, acting by and through its GENERAL SERVICES AGENCY, hereinafter referred to as ("County").

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

1. **WORK.** Design Builder shall provide, furnish, and perform all necessary planning, architectural, engineering, all other design services of any type, procurement, permitting and support services, construction, landscaping, clean-up, all other construction services of any type, and shall provide and furnish all necessary supplies, materials and equipment (except those to be provided by County, if any) and all necessary supervision, labor, and services required for the complete engineering, design, procurement, quality assurance, construction and all necessary installation, start-up and testing required for the Work to be a complete, operational, and fully functional Project, as further described in Section 01 11 13 (Work Covered by Contract Documents) and Section 01 11 20 (Design Services and Deliverables). Hereinafter, the all-inclusive obligations of the Design Builder set forth in the Contract Documents shall be referred to as the "Work". Design Builder shall fully commission and deliver the Work to the County as a complete, operational, and fully functional portion of the Project. Without limiting the generality of this Document 00 52 53 (Agreement), Design Builder shall provide the following work and Services:
  - 1.1 Design Builder shall prepare complete designs, engineering, working drawings, shop drawings and generate documents, drawings and/or engineering analysis setting forth in detail the specifications and requirements for the purchasing and procurement of the services, materials and equipment and for construction of the Work, and shall furnish the services of all necessary supervisors, engineers, designers, draftsmen, and other personnel necessary for the preparation of those drawings and specifications required for the Work, including the pertinent information for natural gas, water supply, and any other utilities, as required.
  - 1.2 Design Builder shall provide, install and complete as specified and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction, start-up and testing, utilities, transportation, and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the Work, including the permanent interconnection for electricity, natural gas, water supply, waste drainage systems and any other utilities and demonstration of fully satisfactory operation of all systems and equipment.
  - 1.3 Design Builder shall supervise and direct the Work, and shall furnish the services of all

supervisors, forepersons, skilled and unskilled labor, and all other personnel necessary to design and construct the complete, operational, and fully functional Project. Design Builder shall provide, manage and organize such personnel as necessary to complete the Work in accordance with all requirements of the Contract Documents.

- 1.4 Design Builder shall obtain all governmental and private approvals, licenses, and permits required to complete the Work; and be responsible for paying the cost of all such approvals, licenses, and permits including any County imposed fees. Design Builder shall design and construct the Work to be a complete, operational, and fully functional part of the Project in full compliance with all Legal Requirements (both public and private), including but not limited to, the standards included and warranties expressed in the Contract Documents and manufacturers' recommendations pertaining to individual items of equipment or systems.

**2. PROJECT REPRESENTATIVES.**

- 2.1 County may assign all or part of its rights, responsibilities and duties to a County Representative. County shall inform Design Builder in writing of such assignment and the extent of its representative's authority.
- 2.2 All notices or demands to County under the Contract Documents shall be to County's Representative at:

County of Alameda  
Hadi Hadjarzadeh, Senior Project Manager  
General Services Agency  
1401 Lakeside Drive, Suite 800  
Oakland, CA 94612

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

- 2.3 All notices or demands to Design Builder under the Contract Documents shall be to Design Builder's Representative at:

---

---

---

---

---

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

**3. CONTRACT TIME(S) AND LIQUIDATED DAMAGES.**

- 3.1 Design Builder shall complete the Work within the following schedule reflecting the date the Contract Time(s) commences to run as set forth in Document 00 55 00 (Notice to Proceed) and Document 00 72 53 (General Conditions).
- 3.2 Design Builder acknowledges that it is responsible for obtaining all required approvals from Other Authorities having Jurisdiction related to the Project and that Design Builder

accepts all time- and cost-related risk relating to those approvals.

- 3.3 Design Builder acknowledges that time is of the essence with respect to the Project, and that the County and its Project Partners will be damaged by any delay in achieving those deadlines.
- 3.4 Contract Time(s) are as follows:
- 3.4.1 Design Builder shall commence site grading and remediation work described in the Part D Of the Project Manual - Site work Construction Documents (On-site and Off-site Civil and Site Utility Drawings) – Refer to Bridging Documents Document 00 52 01 -Part –D within one hundred and five (105) days of the date of the County’s Notice to Proceed.
- 3.4.2 Design Builder shall complete preparation of 100% Design Development Documents within Forty Three (43) days of the date of the County’s Notice to Proceed.
- 3.4.3 Design Builder shall complete preparation of 100% Construction Documents within one hundred and **fifty (150) ~~forty six (146)~~** days of the date of the County’s Notice to Proceed. **The milestone completion of 100% Construction Documents includes the duration for the plan review and approval of County Building Department for a final construction approval.**
- 3.4.4 Design Builder shall achieve Substantial Completion of the Project within five hundred and seventy eight (578) days of the date of the County’s Notice to Proceed.
- 3.5 Design Builder agrees it shall obtain all necessary approvals from Other Authorities Having Jurisdiction that are required to operate the Project within the Contract Time(s).
- 3.6 Liquidated Damages.
- 3.6.1 The County and Design Builder recognize that time is of the essence in this Agreement and that the County and/or its Project Partners may suffer financial loss in the form of additional contract administration expenses (including but not limited to project management and consultants’ expenses, other losses, such as facility lease costs, capitalized interest on bond funding, and delay and loss of public use if the Work is not completed within the time specified in paragraph 3.3 above plus any extensions thereof allowed in accordance with the Contract Documents. Consistent with Article 15 (Time Allowances) of Document 00 72 53 (General Conditions) and paragraph 3.3 above, Design Builder and County agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by County and/or its Project Partners because of a delay in completion of the Work.
- 3.6.2 Accordingly,
- 3.6.2.1 If Design Builder fails to complete 100% Design Development

Documents within the time specified in paragraph 3.3 above, Design Builder shall pay County as liquidated damages and not as a penalty, the following sums of money per Day for each Day the actual time for Design Builder's completion of 100% Construction Documents exceeds the Contract Time: Three Thousand Dollars (\$3,000.00) per Day.

3.6.2.2. If Design Builder fails to complete 100% Construction Documents within the time specified in paragraph 3.3 above, Design Builder shall pay County as liquidated damages and not as a penalty, the following sums of money per Day for each Day the actual time for Design Builder's completion of 100% Construction Documents exceeds the Contract Time: Three Thousand Dollars (\$3,000.00) per Day.

3.6.2.3 If Design Builder fails to commence on-site construction of the Work within the time specified in paragraph 3.3 above, Design Builder shall pay County as liquidated damages and not as a penalty, the following sum of money per Day for each Day after the Contract Time Design Builder does not commence on-site construction: Three Thousand Dollars (\$3,000.00) per Day.

3.6.2.4 If the Design Builder fails to achieve Substantial Completion of the Project within the times specified in paragraph 3.3, Design Builder shall pay County as liquidated damages and not as a penalty, the following sum of money per Day for each Day after the Contract Time that the Design Builder does not achieve Substantial Completion of the Work: Ten Thousand Dollars (\$10,000.00) per Day.

3.6.2.5 If Design Builder fails to achieve Final Completion of the Project within the time specified in paragraph 3.3 above, Design Builder shall pay County as liquidated damages and not as a penalty, the following sum of money per Day for each Day after the Contract Time that the Design Builder does not achieve Final Completion of the Work: Twenty-one Thousand Dollars (\$21,000.00) per Day.

3.7 Liquidated damages for delay shall cover and be in lieu of the actual damages suffered by County and/or its Project Partners as a result of delay. Liquidated damages are intended to compensate County for damages it incurs as a result of delay, but do not cover the cost of completion of the Work or any other damages not arising solely from delay.

#### **4. CONTRACT PRICE.**

4.1 County shall pay the Design Builder \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as the "Contract Price" for performance of Work in accordance with the Contract Documents, subject to adjustment as provided in the Contract Documents.

4.2 The Contract Price is all inclusive and includes all required approvals from Other Authorities Having Jurisdiction, fees, permits, work; all federal, state, and local taxes on materials and equipment, and labor furnished by Design Builder, its Subcontractors, Sub-consultants, architects, engineers, and vendors or otherwise arising out of Design Builder's



performance of the Work, including any increases in any such taxes during the term of this Agreement. The taxes covered hereby include (but are not limited to) occupational, sales, use, excise, unemployment, FICA, and income taxes, customs, duties, and any and all other taxes on any item or service that is part of the Work, whether such taxes are normally included in the price of such item or service or are normally stated separately. Notwithstanding the foregoing, each party shall bear such state or local inventory, real property, personal property or fixtures taxes as may be properly assessed against it by applicable taxing authorities.

5. **DESIGN BUILDER'S REPRESENTATIONS AND WARRANTIES.** In order to induce County to enter into this Agreement, Design Builder makes the following representations and warranties:

- 5.1 Design Builder has visited the Site and has examined the nature and extent of the Work, Site, locality, actual conditions, as built conditions, labor availability and all local conditions and Applicable Laws that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Design Builder and safety precautions and programs incident thereto.
- 5.2 Design Builder has examined all reports of exploration and tests of subsurface conditions, as-built drawings, drawings or reports, available for design and construction purposes, of physical conditions that have been provided by the County, including those which are identified in Documents 00 31 26 (Hazardous Materials Surveys) or 00 31 32 (Geotechnical Data and Existing Conditions), or conditions that may be apparent at the Site.
- 5.3 After contract award, Design Builder will conduct or obtain any additional examinations, investigations, explorations, tests, reports and studies, including but not limited to geotechnical investigations upon which the design will be based, that pertain to the surface and subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site as Design Builder considers necessary for the performance or furnishing of Work at the Contract Price, within the Contract Time(s) and in accordance with the other terms and conditions of the Contract Documents.
- 5.4 Design Builder has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 5.5 Design Builder has given County prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered before contract award in or among the Contract Documents and as-built drawings and actual conditions and acknowledges that the written resolution thereof through Addenda issued by County is acceptable to Design Builder.
- 5.6 Design Builder is a \_\_\_\_\_ [type of business entity] duly organized, existing, and in good standing under the laws of the State of California, and is duly qualified and licensed to conduct business in the State of California. Design Builder is a duly licensed contractor, holding an active Class B (General Building Contractor) license issued by the State of California Contractors License Board.

- 5.7 Design Builder has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Design Builder.
- 5.8 Design Builder confirms its intent to engage the following pre-qualified Subcontractors, who were listed in the Design Builder's Response to Request for Statements of Pre-Qualification and/or Proposal. Design Builder acknowledges its responsibility to provide County with a complete and updated list of Subcontractors as they become known, and that such listing shall be in accordance with the requirements of Public Contract Code §§ 4100, et seq. and 20133.

Name of Subcontractor and Location of Mill or Shop	Description of Work: Reference To Proposal Items	

**6. KEY INDIVIDUALS**

- 6.1 The individuals Design Builder and its Core Organizations named in the Response to Request for Statements of Pre-Qualification and/or Proposal were a material element of the County's selection of Design Builder to receive the award of the Contract, and performance by those individuals on the Project in their designated roles is of paramount importance to the County. Those individuals designated as Key Individuals are listed in Attachment One to this Agreement, which Attachment is hereby incorporated into this Agreement. Design Builder understands, has ascertained and agrees that the County will actually sustain damages if any Key Individuals are transferred or assigned to other projects or duties materially different than those for which they were identified. Accordingly, Design Builder will:
- 6.1.1 Provide County with a minimum sixty (60) days prior written notice of any changes of one or more Key Individuals assigned to the Project,
- 6.1.2 Provide a resume or statement of the experience of any person proposed to replace a Key Individual at least forty five (45) days before the Key Individual leaves the Project. If County determines, in its sole discretion, that the proposed replacement is not a suitable replacement, Design Builder shall promptly present other suitable candidates until County agrees to a replacement.
- 6.1.3 Not replace any Key Individual with any person to whom the County has a reasonable objection.
- 6.1.4 Pay County the amounts specified below as liquidated damages, and not as a penalty, if Design Builder transfers any Key Individual off the Project, or assigns a Key Individual to other projects or to duties materially different than those for

which they were listed in the Proposal without County's prior written approval, which may be given or withheld in the County's sole discretion. The amounts will be paid per month, per person, until County is satisfied, in its sole discretion that the replacement person is performing at a standard equivalent to that of the Key Individual replaced, transferred or reassigned. The Design Builder 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.

<b>Position with DBE or Core Organizations</b>	<b>Damages (per person)</b>
1. Design Builder's Project Manager	\$15,000/month
2. Architect's Principal-in-Charge	2 month minimum
3. Architect's Project Architect	
4. General Contractor's Superintendent	
5. General Contractor's Safety Officer	

- 6.2 The provisions of paragraph 6.1, above will not apply if a Key Individual is no longer employed by Design Builder or the Core Organizations, dies, or is disabled from performing his or her duties, as determined by a qualified physician and confirmed in a writing delivered to County.

**7. CONTRACT AND OTHER DOCUMENTS.**

- 7.1 The Contract Documents which comprise the entire agreement between County and Design Builder concerning the Project consist of the following, each of which is incorporated herein by this reference, including all changes, addenda and modifications thereto:

7.1.1 Request for Proposals from Design-Build Entities (dated July 30, 2021 and including all addenda, attachments and appendices)

7.1.2 Bridging Documents, (see Document 00 52 01)

7.1.3 Contract Requirements

Division 00 (Alameda County Document) as listed in the Table of Contents

Division 01 (Alameda County Document) as listed in the Table of Contents

7.1.4 Basis of Design/ Program Narrative, (see Document 00 52 01)

7.1.5 Project Labor Agreement, dated October 6, 2020 and subsequent amendments

7.1.6 Design Build Entity's Proposal, dated \_\_\_\_\_, as amended by \_\_\_\_\_ and accepted by County

7.1.7 Request for Prequalification Submittals from Design Build Entities, including all addenda

- 7.1.8 Design Build Entity's Prequalification Submittal package, including all attachments and appendices
- 7.1.9 Change orders and Contract Modifications executed in accordance with the Contract Requirements
- 7.2 The Contract Documents define the requirements for design and construction unless otherwise specifically excluded, modified or amended by the Design Builder's Proposal, and accepted by County.
- 7.3 Any conflict between or among Contract Documents shall be resolved pursuant to paragraph 5.4 (Order of Precedence) of Document 00 72 53 (General Conditions).
- 7.4 Construction Documents produced by the Design Builder may serve as contract documents between the Design Builder and a Subcontractor. As to the County and Design Builder, however, the Construction Documents are prepared as part of the Work and do not replace the Contract Documents.
- 7.5 There are no Contract Documents other than those listed above in paragraph 7.1 of this Document 00 52 53 (Agreement). The Contract Documents may only be amended, modified, or supplemented as is provided in Document 00 72 53 (General Conditions) and Section 01 26 00 (Contract Modification Procedures).

**8. MISCELLANEOUS.**

- 8.1 Terms used in this Agreement are defined in Document 00 72 53 (General Conditions) and Section 01 42 16 (Definitions), and will have the meaning indicated therein.
- 8.2 It is understood and agreed that in no instance is any person signing this Agreement for or on behalf of County or acting as an employee or representative of County liable on this Contract or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of County is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 8.3 Design Builder shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with Section 00 62 30 (Subcontractor/Sub-consultant Procurement) and the subcontractor listing requirements of Public Contract Code §§ 4100 et seq. and 20133.
- 8.4 The Contract Price includes all Allowances (if any).
- 8.5 In entering into a public contract or a subcontract to supply goods, services or materials pursuant to a public contract, the Design Builder or subcontractor irrevocably offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act, (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time County tenders final payment to the Design Builder,

without further acknowledgment by the parties.

- 8.6 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at County's office, and shall be made available to any interested party on request. Pursuant to Labor Code § 1861, Design Builder represents that it is aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Design Builder shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 8.7 Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- 8.8 This Agreement shall be deemed to have been entered into in the State of California, County of Alameda, and shall be governed in all respects by California law (excluding conflicts of laws).
- 8.9 Design Builder accepts the claims procedures established by Article 12 (Claims by Design Builder) of Document 00 72 53 (General Conditions) and Government Code §§ 930 through 930.6.
- 8.10 County shall have the right to fully review and approve all phases of Design Builder's design including, but not limited to, drawings, specifications, shop drawings, samples, submittals, reports, and other Contract Documents, as specified in the Contract Documents. Such review, approval and other action shall not relieve Design Builder of its responsibility for a complete, coordinated design complying with the requirements of the Contract Documents; but rather, such review and approval shall be in furtherance of County's monitoring and accepting the design as developed and issued by the Design Builder, consistent with these Contract Documents. Design Builder's responsibility to design and construct the Project in conformance with the Contract Documents is absolute.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A

COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

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

"County"

COUNTY OF ALAMEDA, acting by and through its  
GENERAL SERVICES AGENCY

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

"Design Builder"

[DESIGN BUILDER]

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

APPROVED AS TO FORM:  
DONNA R. ZIEGLER, COUNTY COUNSEL

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

END OF DOCUMENT

ATTACHMENT ONE

LIST OF KEY INDIVIDUALS

POSITION:

KEY INDIVIDUAL

Design Builder's Project Manager:

\_\_\_\_\_

Architect's Principal-in-Charge:

\_\_\_\_\_

Architect's Project Architect:

\_\_\_\_\_

General Contractor's Superintendent:

\_\_\_\_\_

General Contractor's Safety Officer:

\_\_\_\_\_



DOCUMENT 00 62 38

**SUPPLEMENTAL INSTRUCTIONS TO BIDDERS**  
**ENHANCED CONSTRUCTION OUTREACH PROGRAM (ECOP)**  
**(Not Required for Construction Projects 125K and under)**

**GENERAL**

**1. PURPOSE**

- 1.1 It is the express purpose of the Enhanced Construction Outreach Program (ECOP) to encourage the participation in County of Alameda construction projects with:

- 1.1.1 Minority Owned Business Enterprise (MBE),
- 1.1.2 Woman Owned Business Enterprise (WBE),
- 1.1.3 Local Business Enterprise (LBE) and
- 1.1.4 Small Local Business Enterprise (SLBE)

And to ensure that all contracting firms receive an equal opportunity to bid and receive work for this project. The ECOP encourages the inclusion of small businesses in this contract in accordance with Public Contract Code § 2002.

- 1.2 By submitting a bid, Bidders acknowledge and agree to all Document 00 62 38 ~~00-22-19~~ provisions contained herein.
- 1.3 In the event of conflict between the terms of this Section 00 62 38 ~~00-22-19~~ and the PROJECT STABILIZATION / COMMUNITY BENEFITS AGREEMENT for the COUNTY OF ALAMEDA, (Document 00 73 49B) the terms of the PROJECT STABILIZATION / COMMUNITY BENEFITS AGREEMENT for the COUNTY OF ALAMEDA shall take priority.

**2. APPLICATION**

- 2.1 The provisions outlined in this Section 00 62 38 ~~00-22-19~~ apply to this contract for the construction of the above-referenced project. This project is funded solely with local dollars, and these provisions shall apply to all work performed under any contract awarded as a result of this competitive process.
- 2.2 To be considered for a contract award, any bidder who fails to meet ECOP goals identified herein shall be required to demonstrate to the satisfaction of the County that good faith efforts (GFEs) were made in accordance with the criteria listed in Section 7.9, GFE 1-9. Failure of the bidder to demonstrate a good faith effort may result in the bid being deemed non-responsive.

**3. DEFINITIONS**

- 3.1 LOCAL BUSINESS ENTERPRISE (LBE)

- 3.1.1 For the purposes of this program, a Local Business Enterprise means a business that is a firm or dealer with fixed offices located in, and having a street address within the County and holds a valid business license issued by the County or a city within the County for at least 6 months prior to the date upon which a request for sealed bids or proposals is issued.

3.2 MINORITY OR WOMEN BUSINESS ENTERPRISE (MWBE)

- 3.2.1 For the purposes of this program, an MWBE is a Small Business Enterprise (SBE), as that term is defined by the State of California, that meets both of the following criteria:

3.2.1.1 At least 51 percent of the business is owned by one or more minority persons or women, or in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more minority persons or women; and

3.2.1.2 Whose management and daily business operations are controlled by one or more minority persons or women.

- 3.2.2 An MWBE must be certified as such. Valid certification documentation must be provided with the bid response. The County will honor certifications from the following agencies:

3.2.2.1 DBE/ACDBE certification from any California Unified Certification Program (CUCP) member agency, as long as it meets the County's MBE/WBE certification criteria.

3.2.2.2 MBE certification from Western Regional Minority Supplier Development Council (WRMSDC)

3.2.2.3 WBE certification from Women's Business Enterprise National Council (WBENC)

3.2.2.4 SMBE/SWBE certification from the California Dept. of Transportation (CalTrans)

3.2.2.5 MBE/WBE certification from the City of Los Angeles

3.2.2.6 MBE/WBE certification from the California Public Utilities Commission (CPUC) through the Supplier Clearinghouse

3.3 MINORITY PERSON

- 3.3.1 Minority person, for purposes of this section, means Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Subcontinent Asian Americans.

3.4 SMALL BUSINESS ENTERPRISE (SBE)

3.4.1 For the purposes of this program, an SBE meets the current State of California definition of a small business, which is one that:

3.4.1.1 Must be independently owned and operated;

3.4.1.2 Cannot be dominant in its field of operation;

3.4.1.3 Must have its principal office located in California;

3.4.1.4 Must have its owners (or officers in the case of a corporation) domiciled in California; and

3.4.1.5 Together with its affiliates, be either:

3.4.1.5.1 A business with 100 or fewer employees, and an average annual gross receipts of \$15 million or less over the previous three tax years, or

3.4.1.5.2 A manufacturer with 100 or fewer employees.

3.4.1.6 An SBE must be certified or recognized as such by organizations whose certification is accepted by the California Department of General Services or by local agencies identified by the County of Alameda to have effective certification programs. Validation of the current certification by one of the following local agencies must be provided with the bid response:

3.4.1.6.1 Alameda County Transportation Commission (Alameda CTC)

3.4.1.6.2 California Department of General Services (DGS)

3.4.1.6.3 Port of Oakland

3.4.1.6.4 City of Oakland

3.4.1.6.5 and, when the State SBE definition is met, Alameda County (SLEB certification)

### 3.5 SMALL LOCAL BUSINESS ENTERPRISE (S/LBE)

3.5.1 For the purposes of this program, a Small Local Business Enterprise is defined by the County of Alameda and means a business that meets the SBE definition above, and is a firm or dealer with fixed offices located in, and having a street address within the County, and holds a valid business license issued by the County or a city within the County.

#### 4. ENHANCED CONSTRUCTION OUTREACH PROGRAM (ECOP) GOALS

##### 4.1 MBE PARTICIPATION SUBCONTRACTING – 15% GOAL

4.1.1 The MBE element of the ECOP program shall include subcontractors, manufacturers, suppliers, and truckers in calculating achievement of the MBE goal. Any contractor who fails to meet the MBE goals described herein must demonstrate to the satisfaction of the County of Alameda that a good faith effort was made to meet these goals in order to be considered for a contract award.

4.1.1.1 The County shall further require that in order to be awarded a contract, a prime contractor must show that a good faith effort was made to provide at least 15% of the total contract amount to MBE subcontractors, manufacturers, suppliers, and truckers.

4.1.1.2 The MBE goals must be achieved by the use of MBE subcontractors, manufacturers, suppliers, and/or truckers. If the Contractor plans to perform all the work with the Contractor's own forces, the goal will still apply and must be achieved by the use of suppliers, manufacturers, and/or truckers.

4.1.1.3 A certified MBE prime contractor **may not** apply the percentage of the prime contractor's work toward meeting the goals as set forth above. An MBE subcontractor meeting the definition of both an MBE and a WBE **may not** be used to achieve both MBE and WBE required goals. The percentage of MBE firms utilized for the project described herein can only be applied to either MBE or WBE required goals. For purposes of meeting the MBE goals for this project, each participating MBE must be identified as an MBE.

4.1.1.4 Prime contractors are strongly encouraged to sub-contract with S/LBE certified MBEs to meet the goals.

##### 4.2 WBE PARTICIPATION SUBCONTRACTING – 5% GOAL

4.2.1 The WBE element of the ECOP program shall include subcontractors, manufacturers, suppliers, and truckers in calculating achievement of the WBE goal. Any contractor who fails to meet the WBE goals described herein must demonstrate to the satisfaction of the County of Alameda that a good faith effort was made to meet these goals in order to be considered for a contract award.

4.2.1.1 The County shall further require that in order to be awarded a contract; a prime contractor must show that a good faith effort was made to provide at least 5% of the total contract amount to WBE subcontractors, manufacturers, suppliers, and/or truckers.

4.2.1.2 The WBE goals must be achieved by the use of subcontractors, manufacturers, suppliers, and/or truckers. If the Contractor plans to perform all the work with the Contractor's own forces, the goal will still apply and must be achieved by the use of manufacturers, suppliers, and/or truckers.

4.2.1.3 A certified WBE prime contractor **may not** apply the percentage of the prime contractor's work toward meeting the goals as set forth above. A WBE subcontractor meeting the definition of both an MBE and a WBE **may not** be used to achieve both the MBE and WBE required goals. The percentage of WBE firms utilized for the project described herein can only be applied to either MBE or WBE required goals. For purposes of meeting the WBE goals for this project, each participating WBE must be identified as a WBE.

4.2.1.4 Prime contractors are strongly encouraged to sub-contract with S/LBE certified WBEs to meet the goals.

#### 4.3 LBE PARTICIPATION GOALS –60% GOAL

4.3.1 The LBE element of the ECOP program shall include subcontractors, manufacturers, suppliers and/or truckers in calculating achievement of the LBE goal. Any contractor who fails to meet the LBE goals described herein must demonstrate to the satisfaction of the County of Alameda that a good faith effort was made to meet these goals in order to be considered for a contract award.

4.3.1.1 The County shall further require that in order to be awarded a contract, a prime contractor must show that a good faith effort was made to provide at least 60% of the total contract amount to an LBE.

4.3.1.2 The LBE prime contractor may count a portion, or all of its work towards meeting the goal and/or the LBE goal may be achieved by the use of subcontractors, manufacturers, suppliers, and/or truckers.

#### 4.4 S/LBE PARTICIPATION - 20% GOAL

4.4.1 The S/LBE element of the ECOP program shall include subcontractors, manufacturers, suppliers and/or truckers in calculating achievement of the S/LBE goal. Any contractor who fails to meet the S/LBE goals described herein must demonstrate to the satisfaction of the County of Alameda that a good faith effort was made to meet these goals in order to be considered for a contract award.

4.4.1.1 The County shall further require that in order to be awarded a contract; a prime contractor must show that a good faith effort was made to provide at least 20% of the total contract amount to an S/LBE.

- 4.4.1.2 An S/LBE prime contractor may count a portion or all of its work towards meeting the goal and/or the S/LBE goal may be achieved by the use of subcontractors, manufacturers, suppliers, and/or truckers. For purposes of meeting this goal, the 20% S/LBE participation may also be counted toward achieving the 60% LBE participation goal.

**5. SMALL BUSINESS ENTERPRISE 5% BID PREFERENCE**

- 5.1 Prime contractors who are certified small local businesses (S/LBE) shall be eligible to receive a 5% bid preference (maximum financial value shall be \$150,000). Prime contractors that subcontract with certified small local businesses (S/LBE) (in accordance with the Public Contract Code 2002) for a minimum 40% of the contract amount will also be eligible to receive this 5% bid preference. This bid preference shall be applied by multiplying the total Base Bid amount by .95 to determine the bid amount for comparison purposes.

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

- 6.1 The County of Alameda strongly encourages the hiring of local apprentices, youth, unemployed, and under-employed County residents to complete the work required for this project. Those firms that can demonstrate the ability and willingness to provide jobs required to complete this project to local apprentices, youth, unemployed and underemployed County residents should include such evidence in their bid response.

**7. GOOD FAITH EFFORTS, ECOP PACKAGE SUBMITTALS, AND EVALUATION PROCEDURES**

- 7.1 It is required that bidders exercise a good faith effort to secure the participation, as set forth in the specifications, of M/W/S/LBE subcontractors, manufacturers, suppliers and/or truckers on the project. Achievement of the ECOP goals shall constitute prima facie evidence of a Good Faith Effort (GFE). The failure of any bidder to make a good faith effort to achieve the specified participation of M/W/S/LBE subcontractors, manufacturers, suppliers and/or truckers may be grounds for determining that the bid is non-responsive.
- 7.2 In order to be considered for an award, responsible bidders must submit documentation to support the ECOP goals met and the GFEs made. The documentation submitted by each bidder shall be referred to as the ECOP Package.
- 7.3 ECOP Package shall include, but not limited to, ECOP Form 101A, 101B, 102A, 102B and 102C (provided separately as Excel fillable forms) and supporting documentation verifying ECOP goals

met and GFEs made. The ECOP Package must be submitted no later than 2:00 p.m. on the second business day following bid opening.

- 7.3.1 The individual dollar amounts to be subcontracted to the M/W/S/LBE listed in the bidder's proposal will be listed on the S/LBE Participation Information ECOP Forms 101A and 101B and the M/WBE Subcontractor Participation Information ECOP Forms 102A, 102B.
- 7.3.2 ECOP Forms 101A, 101B, 102A 102B, 102C (Excel fillable forms), signature page, and supporting documentation shall be delivered to the County.
- 7.4 Upon request from the County, M/W/S/LBE subcontractors, manufacturers, suppliers and/or truckers who bid to a responsible bidder are required to provide the amounts of their bids to the County for the purposes of verification after bids are opened. This information shall be certified by a principal of the subcontracting firm. To the extent permitted by law, the information provided by the subcontractors, manufacturers, suppliers and/or truckers will be treated as proprietary, and will be solely for the use of County staff or its agents.
- 7.5 Each ECOP Package will be reviewed and evaluated by the County in a timely manner. Bidders must meet the ECOP goals **OR** make GFEs (see section 7.9) in order for their bid to be deemed responsive.
- 7.6 The ECOP Package must be complete, submitted on a flash drive, and contain legible supporting documents:
  - 7.6.1 ECOP Forms 101A, 101B, 102A, 102B, and 102C to be completed electronically and submitted on a flash drive along with the hard copy signature page and supporting documentation.
  - 7.6.2 Supporting certification documentation for the prime contractor and each subcontractor, manufacturer, supplier and/or trucker M/W/S/LBEs submitted in the order they are listed on the ECOP forms and **must be submitted as hardcopy.**
    - 7.6.2.1 To be considered towards meeting the ECOP goals bidders must submit:
      - 7.6.2.1.1 Acceptable certifying documentation for the prime contractor and its subcontractors, manufacturers, suppliers and/or truckers, as applicable (for example, local business license with proof of issue and expiration date, certification letters with expiration dates).
      - 7.6.2.1.2 Upon request, evidence that manufacturers, suppliers, and/or truckers are providing goods or services to subcontractors (for example, letter of intent, agreement, etc.).
  - 7.6.3 Documents evidencing those good faith efforts that were made, submitted in the order listed in the table below with the corresponding item number (1-9) noted on each document.



- 7.6.4 Upon request, evidence of M/W/S/LBE participation (copies of bids, agreements, etc.) for all listed subcontractors, manufacturers, suppliers, and/or truckers that are *not* directly contracting with them (for example, material suppliers to subcontractors).
- 7.7 The County reserves the right, as it may deem appropriate and necessary, to contact responsible bidders during the evaluation process for clarification and/or submission of additional ECOP Goals or GFE documentation.
- 7.8 ECOP GOALS / GOOD FAITH EFFORTS REQUIRED

Listed in the table (below) are examples of acceptable documentation to support a determination that ECOP goals have been met

	ECOP GOALS	EXAMPLES OF ACCEPTABLE DOCUMENTATION
1	<p><b>60% Local Business Enterprise (LBE)</b> LBE participation may consist of the Prime Contractor and Subcontractors and may count towards the LBE, SBE, MBE and/or WBE ECOP goals.</p>	<ul style="list-style-type: none"> <li>Business license issued by the County of Alameda or a City within the County of Alameda and proof of date issued (which is at least 6 months prior to the date bids were solicited). OR</li> <li>Certification letter from an acceptable certifying agency showing a local address and issuance/expiration dates.</li> </ul>
2	<p><b>20% Certified Small Business Enterprise (SBE)</b> Certified SBEs <b>must be Local</b> (S/LBE) to be considered. S/LBE participation may consist of the Prime Contractor and Subcontractors and may count towards the LBE, SBE, MBE and/or WBE ECOP goals.</p> <p>An SBE meets the LBE definition above and the current State definition of a small business that is &lt;100 employees and &lt;\$15 Million annual gross revenues (over the last three years).</p>	<ul style="list-style-type: none"> <li>Same as LBE</li> </ul> <p><i>PLUS</i></p> <ul style="list-style-type: none"> <li>Current certification document or letter with SBE designation</li> </ul>
3	<p><b>15% Minority-Owned Business Enterprise (MBE) Subcontractors</b> MBEs are defined per PCC 2000(e)(1), (e)(2), and (f) and are not required to be LBEs. An MWBE may count towards <u>only</u> MBE or WBE participation (not both); however, a local MBE may count towards both LBE and S/LBE ECOP goals.</p> <p>An MBE is a minority-owned business certified by one of the agencies listed below. An MBE can also be an SBE or</p>	<ul style="list-style-type: none"> <li>Current certification document, letter, etc., with MBE designation</li> </ul>

	LBE for purposes of meeting the SBE or LBE subcontracting goals, but an MBE cannot also be considered a WBE.	
4	<p><b>5% Woman-Owned Business Enterprise (WBE) Subcontractors</b></p> <p>WBEs are defined per PCC 2000(e)(1), (e)(2), and (f) and are not required to be LBEs. An MWBE may count towards <u>only</u> MBE or WBE participation (not both); however, a local WBE may count both towards the LBE and S/LBE ECOP goals.</p> <p>A WBE is a woman-owned business certified by one of the agencies listed below. A WBE can also be an SBE or LBE for purposes of meeting the SBE or LBE subcontracting goals, but a WBE cannot also be considered an MBE.</p>	<ul style="list-style-type: none"> <li>Current certification document, letter, etc., with WBE designation</li> </ul>

- 7.9 The examples of GFE Indicators listed in the table below and suggested samples and are not meant to be mandatory or exclusionary. Other documentation may be acceptable as long as it evidences a GFE.

Good Faith Effort Indicators	Examples of Acceptable Documentation
1. The bidder attended mandatory pre-solicitation or pre-bid meetings that were scheduled by the local agency to inform all bidders of the ECOP requirements for the project for which the contract will be awarded.	<ul style="list-style-type: none"> <li>Copy of pre-bid meeting sign-in sheet (which is e-mailed to attendees and available on County Current Contracting Opportunities website listed below). The name of the firm must be listed. <a href="http://www.acgov.org/gsa_app/gsa/purchasing/bid_content/contractopportunities.jsp">http://www.acgov.org/gsa_app/gsa/purchasing/bid_content/contractopportunities.jsp</a></li> </ul>
2. The bidder identified and selected specific items of the project for which the contract will be awarded to be performed by M/W/S/LBEs to provide an opportunity for participation by those enterprises.	<ul style="list-style-type: none"> <li>Copy of advertisements, certified letters, successfully completed faxes and/or other notices to M/W/S/LBEs with selected specific items identified.</li> </ul>
3. The bidder advertised, not less than ten (10) calendar days before the date the bids are opened, in one or more local daily or weekly newspapers, trade association publications, minority or trade-oriented publications, or trade journals for M/W/S/LBEs that are interested in participating in the project.	<ul style="list-style-type: none"> <li>Copy of advertisements placed showing publication name and date, and dated receipts.</li> <li>Dated receipt with ad copy.</li> </ul>

<p>4. The bidder provided written notice of his or her interest in bidding on the contract to the number of M/W/S/LBEs required to be notified by the project specifications not less than ten (10) calendar days prior to the opening of bids. The bidder may utilize the list of certified local business enterprises in the on-line County Small Local Emerging Business (SLEB) Vendor Query System located at <a href="http://www.acgov.org/sleb_query_app/gsa/sleb/query/slebmenu.jsp">http://www.acgov.org/sleb_query_app/gsa/sleb/query/slebmenu.jsp</a>. The minimum number of M/W/S/LBE firms required to be notified is three (3) for each item of the project selected to be performed by an M/W/S/LBE, where an M/W/S/LBE subcontractor has not been secured for that item.</p>	<ul style="list-style-type: none"> <li>• Copy of dated notice, complete distribution list(s) and evidence of distribution (proof of faxes, e-mails sent, etc.)</li> <li>• Undelivered faxes do not count toward the effort to meet the minimum requirement</li> <li>• Trades and specialties, in addition to M/W/S/LBE designation, must be clearly identified to meet the minimum requirement by using certification letter or source documentation</li> </ul>
<p>5. The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.</p>	<ul style="list-style-type: none"> <li>• Successfully completed telephone log containing specific dates, name of caller, person contacted and comments (i.e., why not bidding, information sent to/date)</li> </ul>
<p>6. The bidder provided interested M/W/S/LBEs with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.</p>	<ul style="list-style-type: none"> <li>• Copy of published advertisements, letters, successfully completed faxes, etc. with M/W/S/LBE name/contact information including the required information or directions on how to obtain it and the date the information was provided</li> <li>• Agenda, meeting notes, etc. including specific topics discussed, M/W/S/LBE firm names and contact persons in attendance that received information, and the location and date information was provided</li> </ul>
<p>7. The bidder requested assistance from local and small business and minority and women community organizations; local and small, minority and women contractor groups, local, state, or federal M/W/S/LBE assistance offices, or other organizations that provide assistance in recruitment and placement of M/W/S/LBEs.</p>	<ul style="list-style-type: none"> <li>• Copy of dated written request and response (letter, successfully completed fax, e-mail, etc.)</li> <li>• Or 2<sup>nd</sup> written request to follow-up, if needed. Phone log is not acceptable.</li> </ul>

<p>8. The bidder negotiated in good faith with the M/W/S/LBEs and did not unjustifiably reject as unsatisfactory bids prepared by any M/W/S/LBEs as determined by GSA</p>	<ul style="list-style-type: none"> <li>• Copies or list of all bids and a spreadsheet listing all bids with firm name, contact person, bid items(s), bid price, M/W/S/LBE classification, and comments re-selection or rejection</li> <li>• M/W/S/LBE bids accepted and included in bid response</li> </ul>
<p>9. Where applicable, the bidder advised and made efforts to assist interested M/W/S/LBEs in obtaining bonds, lines of credit, or insurance required by either the GSA or the contractor.</p>	<ul style="list-style-type: none"> <li>• Copy of advertisements or other notices with specifics referencing willingness to assist M/W/S/LBEs</li> <li>• Agenda, meeting notes including presenter's name and title, specific topics discussed, handouts, etc., name of M/W/S/LBE firms in attendance, contact persons who received advice, location, and date advice was provided</li> </ul>

7.10 The performance by a bidder of the GFE Indicators specified in the table above shall create a rebuttable presumption, affecting the burden of producing evidence, that a bidder has made a good faith effort to comply with the goals and requirements relating to participation by M/W/S/LBEs.

## 8. JOINT VENTURES

8.1 Whenever a joint venture occurs involving either a prime or non-prime (for example, subcontractors, manufacturers, suppliers, and truckers) M/W/S/LBE firm at any level of contracting, trucking, manufacturing, or supplying, the prime contractor shall provide the County with a full account of the nature of ownership interests, the basis for creation of the joint venture, and the particular financial participation and administrative responsibilities of the interested parties. In evaluating the prime contractor's effort, the M/W/S/LBE percentage that is to be attributed to a joint venture shall be determined by multiplying the percentage of the total contract amount that is to be performed by the joint venture times the percentage of actual financial participation in the joint venture represented by the M/W/S/LBE business.

## 9. NONDISCRIMINATION

9.1 The Contractor shall comply with the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964 and shall not, in regard to any position for which an employee or applicant for employment is qualified, discriminate against any employee or applicant for employment because of race, creed, color, disability, sex, sexual orientation, political affiliation, or by any other non-merit factors be otherwise subjected to discrimination. The Contractor shall apply the ECOP that ensures applicants are employed, and that employees are treated during employment without regard to their race, age, religion, Vietnam Era Veteran's status, political affiliation, or any other non-merit factors. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or

transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other terms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- 9.2 Contractor shall, in all solicitations or advertisements for employees placed on behalf of the County, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, disability, sex, sexual orientation or national origin, age, religion, Vietnam Era Veteran's status, political affiliation, or any other non-merit factors.

## **SECTION II**

### **CONTRACT COMPLIANCE REQUIREMENTS**

#### **1. APPLICATION**

- 1.1 The following provisions shall apply to all contracts subject ECOP.

#### **2. ALAMEDA COUNTY CONTRACT COMPLIANCE SYSTEM**

- 2.1 Alameda County utilizes the Elation Systems contract compliance application as part of its commitment to assist contractors to comply with certain legal and contractual requirements. The Elation Systems, a secure web-based computer system, was implemented to monitor compliance and to track and report M/W/S/LBE participation in County contracts.
- 2.2 The prime contractor and all participating local and M/W/S/LBE subcontractors awarded contracts as a result of the bid process for this project are required to use the Elation System to submit ECOP information including, but not limited to, weekly certified payrolls, monthly progress payment reports and other information related to M/W/S/LBE participation. Use of the Elation System, support and training are available at no charge to prime and subcontractors participating in County contracts.
- 2.3 Upon contract award:
- 2.3.1 The County will provide contractors and subcontractors participating in any contract awarded as a result of this bid process, a code that will allow them to register and use the Elation System free of charge.
- 2.3.2 Contractors should schedule a representative from their office/company, along with each of their subcontractors, to attend Elation Systems training.
- 2.3.2.1 Free multi-agency Elation Systems one-hour training sessions require reservations and are held monthly in the Pleasanton, California area.

2.4 It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize Elation Systems.

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

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

### 3. MEETINGS

3.1 After the award of the contract and prior to beginning work, the County may hold a pre-construction conference at which a representative of the Contractor and of each subcontractor must attend. As it becomes necessary during the course of the contract, the County may call meetings of the Contractor and pertinent subcontractors.

### 4. INFORMATION AND RECORDS

4.1 For the purposes of determining compliance with this program, the Contractor shall provide the County with access to all records and documents that relate to M/W/S/LBE participation. To the extent permitted by applicable law, proprietary information will be safeguarded.

4.2 The Contractor must submit the following information to the County on Alameda County approved forms. All subcontractor submittals must be through the prime contractor.

4.2.1 S/LBE Participation Information and M/WBE Subcontractor Participation Information, (ECOP Forms 101A, 101B, 102A, and 102B provided separately as Excel fillable forms) submitted no later than 2:00 p.m. on the second business day following bid opening.

### 5. SUBSTITUTION OF M/W/S/LBE FIRMS

5.1 Substitution of other **firms** (subcontractors at any level, manufacturers, suppliers and/or truckers) for those listed in the proposal on the sheet entitled M/WBE Subcontractor Participation Information or S/LBE Participation Information shall not be made without prior approval of the County, and shall be in accordance with State or Federal law where applicable.

## **SECTION III**

### **NON-COMPLIANCE WITH ECOP**

#### **1. APPLICATION**

1.1 The following provisions shall apply to all contracts subject to ECOP.

#### **2. DETERMINATION OF NON-COMPLIANCE**



2.1 During the performance of the contract, if the General Services Agency has reason to believe or finds that the Contractor has not met the ECOP requirements in the contract, the Director of the General Services Agency (or the Director's designee) shall hold a meeting with the Contractor for the purpose of determining whether the Contractor is out of compliance. If after the meeting, the Contractor is found to be out of compliance, the Contractor will be notified of a public hearing. The public hearing may be held before the Board of Supervisors with a minimum five calendar-day notice given to the Contractor. If the Board of Supervisors finds that there has been a violation, the County will notify the Contractor in writing of the sanctions to be imposed by the Board.

### 3. SANCTIONS

3.1 A finding at the public hearing that there has been a violation of the ECOP requirements of the contract shall be cause for the Board of Supervisors to impose any or all of the following sanctions:

- 3.1.1 Withhold an additional ten percent (10%) of all further contract progress payments until the Contractor provides evidence satisfactory to the Board of Supervisors that the condition of noncompliance has been corrected.
- 3.1.2 Suspend the contract until such time as the Contractor provides evidence satisfactory to the Board of Supervisors that the condition of noncompliance has been corrected.
- 3.1.3 Terminate the contract and collect appropriate damages from the Contractor.
- 3.1.4 Declare that the Contractor is not a responsible bidder, and is ineligible to make bids on future County contracts for a stated period of time or until the Contractor can demonstrate to the satisfaction of the Board of Supervisors that the violation has been corrected.

## SECTION IV

### 1. OUTREACH

- 1.1 To promote the ECOP goals and assist contractors and subcontractors in their efforts to develop the relationships they may require to meet the ECOP goals for this project, and the County will
  - 1.1.1 E-mail the Notice to Bidders to vendors in the County Vendor Database and other sources. Advertise the project once a week for at least two consecutive weeks in a newspaper of general circulation in the county where the project is located, trade organizations and chambers of commerce, and plan rooms. Notice of this project will also be posted on the County Current Contracting Opportunities and Calendar of Events websites (see website URL addresses below).
  - 1.1.2 Incorporate a networking and informational component in the mandatory bid walk/site visit.
  - 1.1.3 Provide information about the project, the ECOP, and other current and upcoming projects at the bid conference/networking meeting.

- 1.1.4 E-mail the list of attendees from the mandatory bid walk to each attendee when issuing the first Addendum for the Project and post the attendance and first Addendum on the Current Contracting Opportunities website.

## 2. CONTRACTOR RESOURCES

The following sources may be contacted for assistance in soliciting M/W/S/LBE participation:

### **Alameda County Contractor Technical Assistance Program (CTAP)**

Carol Henry, CTAP Program Manager (Merriwether & Williams Insurance Services)  
(510) 740-6922 ext.710 [CTAP@imwis.com](mailto:CTAP@imwis.com)

### **Asian American Contractors Association**

Juliana Choy Sommer, President (415) 642-1818 [www.aaca-sf.com](http://www.aaca-sf.com)

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

(510) 686-2555 [www.wrmsdc.org](http://www.wrmsdc.org)

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

[www.wbenc.org](http://www.wbenc.org)

### **California Public Utilities Commission (CPUC) The Supplier Clearinghouse**

MBE and WBE vendors and certifications - [www.thesupplierclearinghouse.com](http://www.thesupplierclearinghouse.com)

### **Alameda County Transportation Commission**

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

Visit the following County of Alameda GSA websites for

<b>CERTIFIED SMALL LOCAL VENDORS</b>	<a href="http://www.acgov.org/sleb_query_app/gsa/sleb/query/slebresultlist.jsp?smEmInd=C">http://www.acgov.org/sleb_query_app/gsa/sleb/query/slebresultlist.jsp?smEmInd=C</a>
<b>CURRENT CONTRACT OPPORTUNITIES</b>	<a href="http://www.acgov.org/gsa_app/gsa/purchasing/bid_content/contractopportunities.jsp">http://www.acgov.org/gsa_app/gsa/purchasing/bid_content/contractopportunities.jsp</a>
<b>UPCOMING CONTRACT OPPORTUNITIES</b>	<a href="http://www.acgov.org/gsa_app/gsa/purchasing/bid_content/futurecontractopportunities.jsp">http://www.acgov.org/gsa_app/gsa/purchasing/bid_content/futurecontractopportunities.jsp</a>
<b>CALENDAR OF EVENTS</b>	<a href="http://www.acgov.org/calendar_app/DisplayListServlet?site=Internet&amp;ag=GSA&amp;ty=PUR">http://www.acgov.org/calendar_app/DisplayListServlet?site=Internet&amp;ag=GSA&amp;ty=PUR</a>
<b>COUNTY OF ALAMEDA HOME PAGE</b>	<a href="http://www.acgov.org/index.htm">http://www.acgov.org/index.htm</a>

## BIDDER INFORMATION AND ACCEPTANCE

*(Submit a hardcopy of this completed page along with all hardcopy ECOP supporting documentation.)*



The undersigned has read and agrees to the Supplementary Instructions to Bidders – Enhanced Construction Outreach Program, Document **00 62 38** ~~00-22-19~~ of the Bid packet and declares that the ECOP Forms 101A, 101B, 102A, 102B and 102C (Excel Fillable Forms provided separately) have been completed accurately by the Prime Firm submitting the bid.

Official Name of Bidder: \_\_\_\_\_

Street Address Line 1: \_\_\_\_\_

Street Address Line 2: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Webpage: \_\_\_\_\_

Type of Entity / Organizational Structure (check one):

☐ Corporation

☐ Joint Venture

☐ Limited Liability Partnership

☐ Partnership

☐ Limited Liability Corporation

☐ Non-Profit / Church

☐ Other: \_\_\_\_\_

Jurisdiction of Organization Structure: \_\_\_\_\_

Date of Organization Structure: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

Primary Contact Information:

Name / Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

Name and Title of Signer: \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

SECTION 00 72 53

GENERAL CONDITIONS

(Design-Build)

TABLE OF CONTENTS

<b>1.</b>	<b>INVESTIGATIONS AND SUBCONTRACTORS</b>	<b>5</b>
1.1	Investigation Required .....	5
1.2	Design Build Entity and Subcontractors and Subconsultants .....	7
<b>2.</b>	<b>SCOPE OF DESIGN BUILD RESPONSIBILITY</b>	<b>10</b>
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	<del>Deductive</del> Add Alternate #6.....	11
2.9	Bid alternates.....	11
2.10	All-Inclusive Design Build Obligation:.....	11
<b>3.</b>	<b>CONTRACT AWARD AND COMMENCEMENT OF THE WORK</b>	<b>16</b>
3.1	Commencement of Work .....	16
3.2	Mobilization .....	16
<b>4.</b>	<b>BONDS AND INSURANCE</b>	<b>17</b>
4.1	Bonds.....	17
4.2	Insurance .....	19
<b>5.</b>	<b>INTERPRETATION OF AND COMPLIANCE WITH CONTRACT DOCUMENTS</b>	<b>19</b>
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
<b>6.</b>	<b>CONSTRUCTION BY THE COUNTY OR BY SEPARATE CONTRACTORS</b>	<b>28</b>
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
<b>7.</b>	<b>THE COUNTY AND PAYMENT</b>	<b>30</b>
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 .....	33
7.4	Election re: Public Contract Code Section 22300 .....	33
<b>8.</b>	<b>CONTROL OF THE WORK</b>	<b>33</b>
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.....	35
8.5	Underground Facilities .....	37
<b>9.</b>	<b>WARRANTY AND GUARANTEE; INSPECTION AND MAINTENANCE OF WORK</b>	<b>40</b>
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 .....	48
9.5	Rights Upon Inspection or Correction.....	50
9.6	Samples and Tests of Materials and Work.....	50
9.7	Proof of Compliance with Contract Provisions.....	51
9.8	Acceptance .....	51
9.9	Maintenance of Work.....	51
9.10	Maintenance During Warranty Period .....	51
<b>10.</b>	<b>DESIGN BUILD ENTITY'S ORGANIZATION AND EQUIPMENT</b>	<b>51</b>
10.1	Design Build Entity's Legal Address .....	51
10.2	Design Build Entity's Office at the Site .....	52
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 .....	54
<b>11.</b>	<b>PROSECUTION AND PROGRESS OF THE WORK</b>	<b>54</b>
11.1	Schedules and Examinations of Contract Documents.....	54
11.2	Lines and Grades, Measurements.....	56
11.3	Cost Data and Other Records .....	57
<b>12.</b>	<b>CLAIMS BY DESIGN BUILD ENTITY</b>	<b>58</b>
12.1	General .....	58
12.2	Subcontractor Claims .....	61
<b>13.</b>	<b>LEGAL AND MISCELLANEOUS</b>	<b>61</b>
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.....	76
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 .....	84
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.....	85
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 .....	89
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: .....	91
13.33	Submittals.....	100
<b>14.</b>	<b>MODIFICATIONS OF THE CONTRACT DOCUMENTS</b>	<b>105</b>
14.1	Limitation on Change Orders .....	105
14.2	Alterations, Modifications and Force Account Work .....	105
14.3	Entire Agreement .....	108
14.4	Modifications .....	108
<b>15.</b>	<b>CONTRACT TIMES</b>	<b>108</b>
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 .....	112
15.5	No Damage for Design Build Entity Caused Delay .....	113
15.6	Time Extension Without Compensation .....	113
15.7	Compensable Delay.....	113
15.8	Liquidated Damages.....	113
<b>16.</b>	<b>WORKING CONDITIONS AND PREVAILING WAGES</b>	<b>114</b>

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 .....	118
16.6	Nondiscrimination .....	118
16.7	Prevailing Wages.....	118
16.8	Environmental Controls .....	120
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. Not Used.~~
- 2.7 Add Alternate #5: Requirements associated with the Parksmart Gold certification.  
  
~~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. 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 with the added cost of the shaft to allow the County to choose either one or two elevators. The current drawings do not accurately reflect the base scope. They currently show elevator shafts at both cores that can accommodate two Elevators, but the revised base scope is Elevator shafts at both cores that can accommodate only one Elevator. This language will supersede what is shown on the drawings and in the Basis of Design.~~
- 2.8 Bid alternates should be separately priced and indicated is delineated in Document 00 42 53 Proposal Form.
- 2.9 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.

- 2.9.1 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.
- 2.9.2 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.
- 2.9.3 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.

- 2.9.4 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.
- 2.9.5 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.
- 2.9.6 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.
- 2.9.7 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.

- 2.9.8 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.
- 2.9.9 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.
- 2.9.10 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.
- 2.9.11 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.
- 2.9.12 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.
- 2.9.13 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.

- 2.9.14 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.
- 2.9.15 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.
- 2.9.16 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.
- 2.9.17 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.
- 2.9.18 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.
- 2.9.19 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-Builders' 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-Build 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. **All work performed by Design Build Entity shall comply with the Alameda County Building Ordinance and California Building Standards Code (Cal. Code Regs., Title 24), and follow the process of plan review and inspection for County Building Department's approval. At plan review stage, a letter of conformance will be issued after conformance of compliance with all applicable State and County ordinances, law and codes. At inspection stage, a Certificate of Compliance will be issued when all the work installed is inspected and determined to be in compliance with the letter of conformance. This includes but is not limited to all Building, Land Development and Grading.**
- 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 **letter of compliance** 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, its 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 into 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

SECTION 00 73 16

**INSURANCE**

1. At or before the date specified in Section 00 11 19 (Request for Proposals), Bidder shall furnish to County satisfactory proof that Bidder has in full force and effect the classes of insurance in the form and with limits and deductibles specified below:

**COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS**

Without limiting any other obligation or liability under this Agreement, the Design Build Entity, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements. The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the Design Build Entity maintains broader coverage and/or higher limits than the minimums shown below, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Design Build Entity. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
<b>A</b>	<b>Marine General Liability (MGL) or Commercial General Liability with no waterborne exclusions</b>  Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$5,000,000 per occurrence (CSL)  Bodily Injury and Property Damage
<b>B</b>	<b>Commercial or Business Automobile Liability</b>  All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses.	\$5,000,000 per occurrence (CSL)  Any Auto  Bodily Injury and Property Damage
<b>C</b>	<b>Workers' Compensation (WC) and Employers Liability (EL)</b>  Required for all Design Build Entities and their consultants, sub-consultants, contractors and sub-contractors with employees	WC: Statutory Limits  EL: \$1,000,000 per accident for bodily injury or disease
<b>D</b>	<b>Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form or Installation Floater as applicable</b>	Limits equal to the completed value of the project and no coinsurance penalty provisions.
<b>E</b>	<b>Professional Liability –</b>  If project involves design/build- Includes all Professional Consultants	\$1,000,000 per occurrence or claim  \$2,000,000 policy aggregate
<b>F</b>	<b>Contractors' Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions</b>  If project involves environmental hazards	\$1,000,000 per occurrence or claim  \$2,000,000 policy aggregate

G	<p><b><u>Endorsements and Conditions:</u></b></p> <ol style="list-style-type: none"><li><b>1. ADDITIONAL INSURED:</b> County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Design Build Entity including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Design Build Entity's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used). Auto policy shall contain or be endorsed to contain additional insured coverage for the County.</li><li><b>2. ADDITIONAL INSURED:</b> County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Design Build Entity including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Design Build Entity's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of <b>both</b> CG 20 10, CG 20 26, CG 20 33, or CG 20 38; <b>and</b> CG 20 37 if a later edition is used). Auto policy shall contain or be endorsed to contain additional insured coverage for the County.</li><li><b>3. DURATION OF COVERAGE:</b> All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained and evidence of insurance must be provided during the entire term of the Agreement and for at least five (5) years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Design Build Entity must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.</li><li><b>4. REDUCTION OR LIMIT OF OBLIGATION:</b> All insurance policies, including excess and umbrella insurance policies, shall be primary and non-contributory coverage at least as broad as ISO CG 20 10 04 13 as respects the County, its officers, officials, employees, or volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Design Build Entity' insurance and shall not contribute with it. Pursuant to the provisions of this Agreement insurance effected or procured by the Design Build Entity shall not reduce or limit Design Build Entity's contractual obligation to indemnify and defend the Indemnified Parties.</li><li><b>5. INSURER FINANCIAL RATING:</b> Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A: VII or equivalent, shall be admitted to the State of California unless otherwise acceptable by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Design Build Entity's insurance by County shall not relieve or decrease the liability of Design Build Entity hereunder. Self-insured retentions must be declared and approved. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Design Build Entity. The policy language shall provide or be endorsed to provide, that the self –insured retention may be satisfied by either the named insured or County.</li></ol>
---	--

	<p>6. <b>SUBCONTRACTORS:</b> Design Build Entity shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. *</p> <p style="padding-left: 40px;"><b>6.1.1. Subcontractors with a maximum subcontract value of \$200,000, can have a minimum MGL limit and Commercial or Business Automobile Liability of \$1 Million per occurrence (CSL), Bodily Injury and Property Damage.</b></p> <p style="padding-left: 40px;"><b>6.1.2. Subcontractors with a maximum subcontract value exceeding the above shall be covered either under the Prime or have a minimum MGL limit and Commercial or Business Automobile Liability of \$5 Million per occurrence (CSL), Bodily Injury and Property Damage.</b></p> <p>7. <b>JOINT VENTURES:</b> If Design Build Entity is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:</p> <ul style="list-style-type: none"><li>– Separate insurance policies issued for each individual entity, with each entity included as a “Named Insured” (covered party), or at minimum named as an “Additional Insured” on the other’s policies. Coverage shall be at least as broad as in the ISO Forms named above.</li><li>– Joint insurance program with the association, partnership or other joint business venture included as a “Named Insured”.</li></ul> <p>8. <b>CANCELLATION OF INSURANCE:</b> Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice of cancellation provided to the County in accordance with policy terms and conditions.</p> <p>9. <b>CERTIFICATE OF INSURANCE:</b> Before commencing operations under this Agreement, Design Build Entity shall provide Certificate(s) of insurance and applicable insurance endorsements as set forth in the provisions of this Agreement and this Exhibit C, in forms satisfactory to County, evidencing that all required insurance coverage is in effect. However, failure to obtain the required documents prior to the work beginning shall not waive the Contactor’s obligation to provide them. The County reserves the right to require the Design Build Entity to provide complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.</p>

2. All policies of insurance placed by the Design Builder or any of its Subcontractors shall be placed with insurers acceptable to County. Such insurance policies shall be placed with A.M. Best-rated A-X (or higher) insurance companies. The insurance required above shall be non-cancelable except for non-payment of premium and shall provide thirty (30) Days written notice to County of cancellation, non-renewal or reduction of coverage. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of County, warrant such increase. Design Builder shall increase required insurance amounts upon direction by County.

- 2.1 County may consider policies placed by Design Builder with higher deductibles or self-insured retentions than stated herein as meeting these requirements, subject to review by County to determine that the self-insured retention or deductible is adequately funded. Design Builder may seek such a determination by submitting, either the most recent actuarial report for the Design Builder’s self-insurance plan or, if funded via a captive insurance company (“Captive”), the most recent financial statement for such Captive, a copy of the document creating or organizing the Captive, a written narrative summarizing how the Captive works and describing in detail any loss reserve fund associated with the Captive, and any reinsurance or other agreement for the Captive as well as any letter of

credit or other agreement securing such reinsurance agreement. The request must be submitted to the County at the Office of the County by October 14, 2021 and may be marked as confidential or proprietary as appropriate.

3. Required Endorsements: The policies required above shall contain the following provisions:
  - 3.1 Insurance policies required under above shall provide a blanket additional endorsement to include the County of Alameda, its General Services Agency, the Alameda County Board of Supervisors, and their employees, representatives, consultants, and agents as additional insureds and each policy shall also provide for the naming of additional insureds throughout the duration of the Project.
  - 3.2 Such policies required above shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurance.
  - 3.3 Each such insurance policy required above shall be primary and no other insurance or self-insured retention carried or held by County shall be called upon to contribute to a loss covered by insurance for the named insured.
  - 3.4 Each such policy required in parts B and C above shall provide that each insurance underwriter waives all of its rights of recovery by subrogation, or otherwise, against the County and all additional insureds described in part G.
4. Prior to the commencement of any Work, Design Builder shall deliver to County Certificates of Insurance for all required coverages on a standard ACORD Form 25-S, or other form as required by County, along with all required endorsements which shall have clearly typed thereon the County Contract Number and title of the Project. Written notice of cancellation, non-renewal, or reduction in coverage of any policy shall be mailed to the County (Attention: Contract Administration/Inspection) at the address for notice listed in Article 2 of Section 00 52 53 (Agreement), thirty (30) Days in advance of the effective date of the cancellation, non-renewal, or reduction in coverage. Design Builder shall maintain insurance in full force and effect during entire period of performance of Contract Documents, during warranty and guarantee periods, and for such additional periods as required more specifically herein, specifically including the requirements of parts B, D and F above. At the time of making application for an extension of time, and during all periods exceeding the Contract Time resulting from any cause, Design Builder shall submit evidence that insurance policies will be in effect during requested additional period of time. Upon County's request, Design Builder shall submit to County, within thirty (30) Days, copies of the actual insurance policies or renewals or replacements. Upon County's request, Design Builder shall submit, within thirty (30) Days, copies of all documentation that the County deems necessary to determine the ongoing funding adequacy of any self-insured retention or deductible higher than stated herein. Such documentation may include the most recent actuarial report for the Design Builder's self-insurance plan or, if funded via a Captive, the most recent financial statement for such Captive, a copy of the document creating or organizing the Captive, a written narrative summarizing how the Captive works and describing in detail any loss reserve fund associated with the Captive, and any reinsurance or other agreement for the Captive as well as any letter of credit or other agreement securing such reinsurance agreement.
5. Design Builder shall pay all insurance premiums, including any charges for required waivers of subrogation or the cost to add additional insureds. If Design Builder fails to maintain insurance,

County may take out comparable insurance, and deduct and retain amount of premium from any sums due Design Builder under Contract Documents.

6. If injury occurs to any employee of Design Builder, Subcontractor of any tier for which the employee or the employee's dependents (in the event of employee's death) is entitled to compensation from County under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from County, County may retain out of sums due Design Builder under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If County is compelled to pay compensation, County may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Design Builder to reimburse County.
7. Nothing in this Section 00 73 16 shall be construed as limiting in any way the extent to which Design Builder or any Subcontractor may be held responsible for payment of damages resulting from their operations.
8. If any Subcontractor is not an insured under the insurance policies of Design Builder described in above, each such Subcontractor must obtain and maintain a minimum of one million dollars (\$1,000,000) of Commercial General Liability insurance and four million dollars (\$4,000,000) of Umbrella/Excess Liability insurance. At the sole discretion of County, such limits for Subcontractor coverage may be reduced based on the size and scope of the subcontract. If any Subcontractor is not an insured under the insurance policy described in part F above, each such Subcontractor whose work involves: the removal of asbestos, lead, or other toxic substance; the removal or replacement of underground tanks; or the use of toxic chemicals or substances must obtain a minimum of one million dollars (\$1,000,000) in Contractors Pollution Legal Liability insurance. Except as required by the this paragraph, all Subcontractors shall otherwise maintain the same types, terms and amounts of insurance required to be maintained by Design Builder with respect to their portions of the Work and all other provisions of this Section 00 73 16 shall apply to such subcontractors. Design Builder shall cause the Subcontractors to furnish proof of such insurance to the County within ten (10) Days of the County's request.
9. The provisions set forth in, part E above shall apply to any licensed professional engaged by Design Builder to perform any portion of the Work ("Professional").

END OF DOCUMENT

SECTION 01 32 26

**SCHEDULES AND REPORTS**

**PART 1 - GENERAL**

**1.1 SUMMARY**

- 1.1.1 Design Builder shall perform scheduling of Work under these Contract Documents in accordance with requirements of this Section 01 32 26 and Section 01 33 00 (Submittal Procedures).
  - 1.1.1.1 Development of schedule, cost and resource loading of the Project Schedule, monthly payment requests and project status reporting requirements of the Contract Documents shall employ scheduling as required in this Section 01 32 26.
  - 1.1.1.2 Project Master Schedule, Design Schedule and Construction Schedules shall be time-scaled and cost- and resource-loaded. Monthly Schedule Updates shall be time-scaled and cost loaded. Cost loading shall be the basis of the Schedule of Values as specified in Section 01 29 00 (Payment Procedures).
  - 1.1.1.3 All Schedules shall be in MS Schedule (latest edition) computer software format compatible with County's existing computer software format.
  - 1.1.1.4 All Schedules shall be submitted prior to the dates identified in Section 01 33 00 (Submittal Procedures).
- 1.1.2 Design Builder's obligations under paragraph 1.1.1 of this Section 01 32 26 are hereby deemed material obligations. Nothing in this paragraph 1.1.2 or the lack of an express statement that any other Contract Document provision is or is not material shall be considered in determining whether any such other provision is material.
- 1.1.3 Scheduling Consultant Qualifications: The Design Builder's team shall include a specialist in CPM scheduling and reporting acceptable to the County with experience performing scheduling required herein on at least two prior, similar projects, and with the capability of producing CPM reports and diagrams within 48 hours of County's request.
- 1.1.4 Transmit each item under form approved by County or following Section 01 33 00 (Submittal Procedures).
  - 1.1.4.1 Identify Project with the County Contract number, and name of Design Builder.
  - 1.1.4.2 Provide space for Design Builder's approval stamp and County's review stamps.
  - 1.1.4.3 Submittals received from sources other than Design Builder will be returned to Design Builder without County's review.

**1.2 GENERAL SCHEDULE REQUIREMENTS**

- 1.2.1 Schedules: The Design Builder shall submit an operating electronic version of an original, plus hardcopy versions, of the following schedules to the County:



- 1.2.1.1 Proposed Schedule as included in the Design Builder's Proposal Package for the Request for Proposals as outlined in Article 13.2.2 of Document 00 11 19 (Request for Proposals). The Proposed Schedule shall be in accordance with the requirements outlined in paragraph 1.3 below. The accepted Proposed Schedule shall serve as the basis for preparing the Project Master Schedule.
- 1.2.1.2 Project Master Schedule as required by Section 01 11 20 (Design Services and Deliverables) and paragraph 1.4 below.
- 1.2.1.3 Design Schedule as required in paragraph 1.5 below.
- 1.2.1.4 Construction Schedule as required in paragraph 1.6 below.
- 1.2.1.5 Look Ahead Schedule as required in paragraph 1.6 below.
- 1.2.2 Acceptance Procedures for Baseline Schedules:
  - 1.2.2.1 Submittal of the Project Master Schedule, Design Schedule, and Construction Schedules shall adhere to the schedule submittal process outlined in Document 01 33 00 (Submittal Procedures), paragraph 1.5.
  - 1.2.2.2 Original Master Project Schedule and Design Schedule shall be reviewed at the Design Conference. Within seven (7) Days after the Design Conference, the County will review and either accept the Schedules or reject and provide comments, suggested changes, and revisions that must be addressed by the Design Builder to the satisfaction of the County. Design Builder shall correct and resubmit the Schedule within seven (7) Days.
  - 1.2.2.3 Within seven (7) Days of receipt of revised Project Master Schedule and Design Schedule, the County will either accept the Schedules or reject and request further information and justification. Design Builder shall, within three (3) Days, provide County with a complete written narrative response to the County's request discussing how the baseline resubmittal addresses each of the contract conformance deficiencies noted in the original submittals.
  - 1.2.2.4 Detailed Construction Schedules shall be reviewed at Pre-Construction Conferences for each major phase of work outlined in Section 01 31 19 (Project Meetings). Within seven (7) Days after the Pre-Construction Conference, the County will review and either accept the Schedule or reject and provide comments, suggested changes, and revisions that must be addressed by the Design Builder to the satisfaction of the County. Design Builder shall correct and resubmit the Schedule within seven (7) Days.
  - 1.2.2.5 Within seven (7) Days of receipt of revised Detailed Construction Schedule, the County will either accept the Schedule or reject and request further information and justification. Design Builder shall, within three (3) Days, provide County with a complete written narrative response to the County's request discussing how the baseline resubmittal addresses each of the contract conformance deficiencies noted in the original submittals.
- 1.2.3 Time of Completion: Overall time of completion and time of completion for each Milestone shown on Project Master Schedule shall adhere to times in Document 00 52 53 (Agreement) as modified by subsection 3.4 of Document 00 52 53. Modification pursuant to subsection 3.4 of Document 00 52 53 shall be by a no-cost Change Order which shall include modified Design, Construction and Project Master Schedules

and reduce times for completion listed in subsection 3.4 of Document 00 52 53. Notwithstanding any modification to the Contract Times pursuant to subsection 3.4 of Document 00 52 53, Design Builder may otherwise choose to work to an earlier (advanced) schedule, but should it choose to do so:

- 1.2.3.1 It must first notify the County of its intention to work to an earlier (advanced) schedule and provide a written explanation of how it intends to improve on the Contract Times. County is not required to accept such an earlier (advanced) schedule, i.e., one that shows early completion dates for the Contract Times.
- 1.2.3.2 Design Builder shall not be entitled to extra compensation in the event Design Builder completes its Work, for whatever reason, beyond completion dates shown in such an earlier (advanced) schedule but within the Contract Times.
- 1.2.3.3 A schedule showing the work completed in less than the Contract Times shall be considered to have Project Float. The Project Float is the time between the scheduled completion of the Work and the Contract Time for completion of the Work. Project Float is a resource available to both County and Design Builder.
- 1.2.4 Float Ownership: Neither County nor Design Builder owns float. The Project owns the float. As such, liability for delay to the Work rests with the party whose unexcused delay, last in time, actually causes delay to the Project.
  - 1.2.4.1 For example, if Party A incurs unexcused delay and uses some, but not all of the float and Party B later incurs unexcused delay and uses the remainder of the float as well as additional time beyond the float, Party B shall be liable for the delay that represents a delay to the Work.
  - 1.2.4.2 Party A would not be responsible for the delay since it did not consume all the float and additional float remained; therefore, completion was unaffected by Party A.
- 1.2.5 The Design and Construction Progress Schedules shall be the basis for evaluating job progress, payment requests, and time extension requests. Responsibility for developing Contract schedules and monitoring actual progress as compared to Progress Schedule rests with Design Builder.
- 1.2.6 Failure of the Progress Schedule to include any element of the Work or any inaccuracy in Progress Schedule will not relieve Design Builder from responsibility for accomplishing the Work in accordance with the Contract Documents. The County's acceptance of the Design and Construction Progress Schedules shall be for its use in monitoring and evaluating job progress, payment requests, and time extension requests, and shall not, in any manner, impose a duty of care upon County, or act to relieve Design Builder of its responsibility for means and methods of design and construction.
- 1.2.7 County Review Requirements: The Design Builder shall consider the County review requirements as specified in Section 01 11 20 (Design Services and Deliverables). The Design Builder shall have the responsibility to package and submit complete and coordinated submittal documents to County.
- 1.2.8 The Design Builder shall specifically include in all schedules the EIR Mitigation Measures identified in paragraph 16.8 of Document 00 72 53 (General Conditions).

### 1.3 PROPOSED SCHEDULE

- 1.3.1 The Design Builder shall submit a Proposed Schedule as part of the Phase II Proposal in response to the

requirements specified in Section 00 11 19 (Request for Proposals). The Proposed Schedule shall fit within and coordinate with the Contract Times, including any and all design interfaces.

**1.3.2 Preparation:** Indicate each significant Contract activity separately. Activities to be included in the Proposed Schedule will be as follows:

1.3.2.1 Detailed activities for Design of all phases of the Work including but not limited to all design deliverables as required by Section 01 11 20 (Design Services and Deliverables), design coordination meetings, other Agency reviews, other third party reviews, and incorporation of comments, through Permit and acceptance of the Construction Documents. All activities described in this paragraph, shall be incorporated into the Proposed Schedule.

1.3.2.2 Detailed Submittal, review, and procurement activities for all critical and near-critical submittals for the Work.

1.3.2.3 Detailed plan for mobilization, execution of contracts, design as described in Section 01 11 20 (Design Services and Deliverables), submittals, procurement, and all work that must be performed prior to the start of construction of the Project.

1.3.2.4 Summarize activities related to construction for the remainder of the Work. The remainder of the Work will include, but shall not be limited to, the following activities in reasonable detail, and indicating the probable critical path:

1.3.2.4.1 Critical lead times

1.3.2.4.2 Building foundation and structure activities

1.3.2.4.3 Building exterior skin and interior finishing activities

1.3.2.4.4 Finish site work

1.3.2.4.5 Building commissioning and move-in activities

1.3.2.4.6 Hazardous materials abatement, demolition, and relocation of utilities associated with construction of the Project.

1.3.2.4.7 Final site work activities

**1.4 PROJECT MASTER SCHEDULE**

1.4.1 The Design Builder shall prepare the Project Master Schedule, which shall adhere to times stated in Document 00 52 53 (Agreement), County's proposed sample project schedule in Part-4 of this document and in the accepted Proposed Schedule. The Project Master Schedule will outline all dates and time periods for the delivery of all Design Builder's services and requirements for information from the County necessary for the performance of the Services. Failure to include any work item required for performance of this Contract on the Schedule shall not excuse Design Builder from completing all work within applicable completion dates, regardless of County's approval of the schedule. The Project Master Schedule will include the following items, but not limited to:

1.4.1.1 Schedule for completing the project design documents (through release for construction), each

required submittal and the times for submitting, reviewing and processing such submittal, as specified in Section 01 11 20 (Design Services and Deliverables).

1.4.1.2 Preparation and processing of Construction submittals.

1.4.1.3 Critical lead times.

1.4.1.4 Significant construction milestones (e.g., groundbreaking, start and completion of hazardous materials abatement, demolition, completion of site utilities, completion of foundation, completion of structural frame, completion of exterior shell, substantial completion, testing & commissioning, move-in, substantial completion project completion dates, etc.).

1.4.1.5 Date for decision from County on items affecting the Design Builder's schedule.

1.4.1.6 Utility interruptions, relocation, and connections affecting Project operations.

1.4.2 The Project Master Schedule shall be updated on a monthly basis and submitted as part of each Progress Payment Application.

## 1.5 DESIGN SCHEDULE

1.5.1 The Design Schedule shall adhere to Contract Times in Document 00 52 53 (Agreement) and specified in the accepted Proposed Schedule. The Design Schedule shall include all activity detail for completing the design of all phases of the Work. Failure to include any work item required for performance of this Contract on the Schedule shall not excuse Design Builder from completing all work within applicable completion dates, regardless of County's approval of the schedule. The Design Schedule shall include, but not be limited to the following:

1.5.1.1 Preparation and review of Design submittals and other critical design completion dates. Include all design deliverables as required by Section 01 11 20 (Design Services and Deliverables).

1.5.1.2 Design coordination meetings

1.5.1.3 Conference(s) with County and review times.

1.5.1.4 Dates for decision from County on designated items or orders affecting schedule.

1.5.1.5 Dates for reviews by Other Agencies Having Jurisdiction, Utility Companies and third parties.

1.5.1.6 Time for incorporation of comments.

1.5.1.7 Department of Corrections and other Permits

1.5.1.8 Acceptance of the Construction Documents for the Project

1.5.2 Design Builder shall resubmit Original Schedule to address County comments if requested by County. Resubmittal will be delivered no more than 5 Days after receipt of County comments or request.

## 1.6 CONSTRUCTION SCHEDULE

- 1.6.1 The Construction Schedule shall adhere to times in Document 00 52 53 (Agreement) and specified in the accepted Proposed Schedule. The Construction Schedule (Original and updates) shall indicate all separate fabrication, procurement and field construction activities required for completion of the Work. Failure to include any work item required for performance of this Contract on the Schedule shall not excuse Design Builder from completing all Work within the Contract Times, regardless of County's approval of the schedule.
- 1.6.2 Activities: All Design Builder, Subcontractor, and assigned Design Builder work (including engineering and other professional services) shall be shown in a logical sequence that demonstrates a coordinated plan of work. The intent is to provide a common basis of acceptance, understanding, and communication, as well as interface among all parties involved in the Project, including but not limited to Subcontractors. Indicate the estimated time duration, sequence requirements, and relationship of each activity in relation to other activities. Show dependencies and logic between activities so that the effect of progress (or lack of progress) on related activities and the overall schedule can be monitored. The list of activities shall include, but not be limited to, the following:
- 1.6.2.1 Submittal Preparation and Review: Include review and resubmittal times indicated in Section 01 33 00 (Submittal Procedures), in schedule. Coordinate submittal review times in Design Builder's Contract Schedule with Submittals Schedule. Phase the submittal process to ensure that items are submitted in order of their importance to the construction process. Implement a system that staggers submittals by "start no earlier than" date, complexity and number.
- 1.6.2.2 Include procurement process activities for long lead items and major items requiring a cycle of more than sixty (60) Days as separate activities in schedule. Procurement cycle activities include, but are not limited to, submittals, approvals, purchasing, fabrication, and delivery. Delivery dates indicated stipulate the earliest possible delivery date.
- 1.6.2.3 Significant construction milestones including but not limited to:
- 1.6.2.3.1 Mobilization.
  - 1.6.2.3.2 Earthwork and underground utility site work completion.
  - 1.6.2.3.3 Foundation completion.
  - 1.6.2.3.4 Structural frame completion.
  - 1.6.2.3.5 Shell completion.
  - 1.6.2.3.6 Plumbing installation.
  - 1.6.2.3.7 Fire protection installation.
  - 1.6.2.3.8 HVAC installation.
  - 1.6.2.3.9 Electrical installation.
  - 1.6.2.3.10 Security installation and completion
  - 1.6.2.3.11 Substantial Completion
  - 1.6.2.3.12 Beneficial Occupancy
  - 1.6.2.3.13 Final Project Completion
  - 1.6.2.3.14 Demobilization.

- 1.6.2.4 Date of request of designated working spaces, storage areas, access, and other facilities to be furnished by the County.
- 1.6.2.5 Dates for decision from County on designated items or orders affecting schedule.
- 1.6.2.6 Mock-up construction.
- 1.6.2.7 Activities related to the delivery of Design Builder and County-furnished equipment to be Design Builder-installed per Contract shall be shown. Equipment requirements including, but not limited to, architecturally significant equipment, communications equipment, and security equipment. Design Builder shall include the latest date that County-furnished products are required to allow completion of the Work on schedule.
  - 1.6.2.7.1 The latest date that installation details must be provided to the Design Builder to avoid schedule delays.
  - 1.6.2.7.2 The latest delivery dates that will allow the project to be completed according to schedule.
- 1.6.2.8 Activities related to the delivery and installation of County-furnished and installed furniture to be coordinated by the Design Builder. Furniture requirements include, but are not limited to, electrical and data connections. Design Builder shall include the latest date that County-furnished products are required to allow completion of the Work on schedule.
  - 1.6.2.8.1 The latest date that installation details must be provided to the Design Builder to avoid schedule delays.
  - 1.6.2.8.2 The latest delivery dates that will allow the Work to be completed according to schedule.
- 1.6.2.9 Utility interruptions, relocation, and connections.
- 1.6.2.10 Show the effect of the following factors on the construction schedule:
  - 1.6.2.10.1 Use of premises restrictions.
  - 1.6.2.10.2 Environmental control.
- 1.6.2.11 Punch list preparation.
- 1.6.2.12 Work by County and/or by other contractors that may affect or be affected by Design Builder's activities. Include a separate activity for each contract, which may include, but are not limited to, utility companies, communications systems providers, equipment providers, and others.
- 1.6.2.13 Testing and commissioning. Include sufficient time to comply with the requirements of the Section 01 91 00 (General Commissioning Requirements); and any regulatory requirements; and assure completion of the Work within the Contract Time.
- 1.6.2.14 Licensing: allow time for administrative procedures necessary for certification of the Project.

- 1.6.2.15 All regulatory agency approvals (e.g., Department of Corrections, Fire Marshal, City, others).
- 1.6.2.16 Move-in.
- 1.6.3 All activities shall be identified through codes or other identification to indicate the portion of the Work (i.e. County Building, Court Building, site work) and Design Builder/Subcontractor responsibility to which they pertain.
- 1.6.4 Break up the Work schedule into activities of durations of approximately fourteen (14) Days or less each, except for non-field design and activities as otherwise deemed acceptable by County.
- 1.6.5 Critical Path Activities: Identify critical path activities, including those for interim completion dates. Scheduled start and completion dates shall be consistent with Contract milestone dates. Show the critical path in red. For each activity, show early start, late start, early finish, late finish, durations measured in Days, total and available float, resources, predecessor and successor activities, planned workday/week for the activity and scheduled/actual progress payments. "Critical path" shall mean all activities with zero float. A path with three (3) work days or less of float shall be considered a "near critical path" and shown in a lighter shade of red. No more than twenty percent (20%) of the schedule activities are to be considered critical or near critical.
- 1.6.6 Seasonal weather conditions (which do not constitute a delay as defined herein) shall be considered in the planning and scheduling of all work influenced by high or low ambient temperatures or presence of high moisture to avoid delays. The number of allowable days of adverse weather is outlined in Document 00 72 53, Article 15.3 (General Conditions). The Design Builder shall adhere to procedures as specified in the Contract Documents for giving notice of delays resulting from adverse weather that exceeds the allowable Days.
- 1.6.7 The Design Builder shall meet with the County to review and discuss each Schedule (i.e., Original Construction Schedule and each monthly update) within seven (7) Days after each Schedule has been submitted to County.
  - 1.6.7.1 County's review and comment on any Schedule shall be limited to Contract conformance (with sequencing, coordination, and milestone requirements).
  - 1.6.7.2 Design Builder shall make corrections to Schedule necessary to comply with Contract requirements and shall adjust Schedule to incorporate any missing information requested by County. Design Builder shall resubmit Initial Original Schedule and Monthly Schedules if requested by County.
- 1.6.8 If Design Builder is of the opinion that any of the Work included on its Schedule has been impacted such that there will be a delay in achieving any Milestone, it shall submit to County a written Time Impact Evaluation ("TIE") in accordance with paragraph 1.10 below. The TIE shall be based on the most current update of the Schedule.
- 1.6.9 A six (6) week "Look Ahead Schedule," detailed daily bar chart schedule shall be updated and issued weekly.
  - 1.6.9.1 Look Ahead Schedule shall cover a forty-nine (49) Day period, beginning with the week preceding the 6-week detailed look ahead.

- 1.6.9.2 Use the Contract Schedule as the basis for generating the 6-week detailed schedule.
- 1.6.9.3 Format:
  - 1.6.9.3.1 Provide bar chart using same logic as Contract Schedule, with maximum fourteen (14 Day) construction activity duration. Provide activity identification used on the accepted Contract Schedule.
  - 1.6.9.3.2 Provide daily resource allocation for each trade.
  - 1.6.9.3.3 Provide exact activity location for scheduled Work.
- 1.6.9.4 Provide information for each significant activity, with special care taken to describe scheduling and coordination with other contracts, and Work by the County, including but not limited to utility shutdowns, road closures, etc.
- 1.6.9.5 Show the status of all outstanding and pending submittals including scheduled and actual submittal dates, the durations and expiration of submittal review periods, etc.

## **1.7 MONTHLY SCHEDULE UPDATE SUBMITTALS**

- 1.7.1 Following acceptance of Design Builder's Project Master Schedule, Design Schedule and Construction Schedule, Design Builder shall monitor progress of Work and update Schedules each month to reflect actual progress on each activity and any anticipated changes to planned activities. Monthly Schedule Updates shall include the following:
  - 1.7.1.1 Design Builder's estimated percentage complete for each activity in progress.
  - 1.7.1.2 Actual start/finish dates for all activities shown on initial Contract Schedule with all subsequent approved additions.
  - 1.7.1.3 List of materials and/or equipment delivered for which Design Builder is requesting payment and original invoice verifying cost.
  - 1.7.1.4 Identification of processing errors, if any, on the previous update reports.
  - 1.7.1.5 Resolution of any conflicts between actual progress and planned progress when out-of-sequence activities arise. Design Builder shall submit revisions to schedule logic to conform to current job status and directions, without changing original activity identification.
  - 1.7.1.6 Each update shall include a written narrative report (as specified in Paragraph 1.12.1 below) with the updated progress analysis.
  - 1.7.1.7 CPM Reports: Concurrent with CPM schedule updates, submit one (1) electronic and five (5) hardcopies of each of the following computer-generated reports. Format for each activity in reports shall contain activity number, activity description, cost and resource loading, original duration, remaining duration, early start date, early finish date, late start date, late finish date, and total float.
    - 1.7.1.7.1 Provide printed report indicating actual versus planned resource loading for each



trade and each activity. This report shall be provided on a monthly basis. Actual resource information shall be recorded on Design Builder's daily reports. These reports will be basis for information provided in monthly printed reports. Explain all variances and mitigation measures.

- 1.7.1.7.2 A Predecessor / Successor Report: List of all activities showing associated predecessor / successor activities, their logical relationships, free float, total float, early start/early finish date.
- 1.7.1.7.3 Total Float Report: List of all activities sorted in ascending order of total float, and then early start/early finish date.
- 1.7.1.7.4 Earnings Report: Compilation of Design Builder's earnings from Notice to Proceed until the most recent Application for Payment. Show all activities sorted and grouped by project phase and location. For each activity show the Activity ID, description, budgeted cost, percent completed as of the last update, percent completed to-date, cost as of the previous period, cost this period, and cost-to-date.
- 1.7.1.7.5 The Design Builder shall submit any other type of report as deemed necessary by the County.
- 1.7.1.8 The updated Contract Schedule shall accurately represent the as-built condition of all completed Work and the percentage remaining of all in-progress Work activities as of the date of the updated Contract Schedule.
- 1.7.1.9 The updated Contract Schedule shall incorporate all changes mutually agreed upon by Design Builder and County during preceding periodic reviews, all changes resulting from Change Orders and Field Orders, and all remaining days of the inclement weather and regulatory review durations.
- 1.7.1.10 Design Builder shall perform the Work in accordance with the updated Contract Schedule. Design Builder may change the Contract Schedule to modify the order or sequence of accomplishing the Work only with the County's prior agreement.
- 1.7.1.11 Within the first (1st) week of each month, the County will administer a monthly schedule update meeting. At or before the monthly schedule update meeting, Design Builder shall submit a monthly updated schedule indicating activity status through the end of the previous month. Design Builder shall include in the monthly updated schedule any proposed schedule revisions as outlined in paragraph 1.8 below.
- 1.7.1.12 Procedures for review and acceptance of the monthly updated schedule are outlined in paragraph 1.8 below.
- 1.7.1.13 No Application for Payment will be processed, nor shall any progress payments become due, until updated Contract Schedules are accepted by the County's Representative.
- 1.7.1.14 The accepted, updated Contract Schedule shall be the Contract Schedule of record for the period it is current and shall be the basis for payment during that period.
- 1.7.1.15 A USB flash drive containing the complete MS Project Planner data for the Contract Schedule

update and five (5) hard copies of computer-generated schedule and reports will be furnished to the County's Representative for processing the application for payment. The Design Builder shall provide full access to electronic MS schedule files for the County.

## **1.8 SCHEDULE REVISIONS**

1.8.1 The County will administer a monthly schedule update meeting to review and discuss each monthly updated schedule submittal.

1.8.1.1 Included with each monthly updated schedule submittal, the Design Builder shall submit any proposed schedule revisions to the County's Representative, including, but not limited to, the following:

1.8.1.1.1 Actual and anticipated duration changes including revisions due to inclement weather or regulatory agency review delays;

1.8.1.1.2 TIEs for Change Orders and Time Extension Request;

1.8.1.1.3 Schedule diagrams showing resolution of conflicts between actual Work progress and schedule logic when out-of-sequence activities develop because of actual construction progress. Design Builder shall submit revisions to schedule logic to conform to current job status and directions, without changing original activity identification;

1.8.1.1.4 Actual and anticipated Design Builder delays;

1.8.1.1.5 A narrative report with the updated progress analysis, which shall include, but shall not be limited to, a description of problem areas, current and anticipated delaying factors and their impacts, and explanations of corrective action taken and any proposed revisions for a Recovery Plan as defined below.

1.8.1.2 These meetings are considered a critical component of overall monthly schedule update submittal; accordingly, Design Builder shall ensure that appropriate personnel from its organization attend. At a minimum, Design Builder's General Superintendent and Scheduler shall attend these meetings.

1.8.1.3 Monthly Schedule update meetings will be scheduled for no less than four hours duration.

1.8.2 Within seven (7) Days after the monthly schedule update meeting, the County will either accept the Schedule or reject the Schedule and provide comments, suggested changes, and revisions that must be addressed by the Design Builder to the satisfaction of the County. Design Builder shall correct and resubmit the Schedule within seven (7) Days.

1.8.3 Neither the updating, changing, or revising of any report, curve, schedule or narrative submitted to County by Design Builder under this Contract, nor County's review or acceptance of any such report, curve, schedule, or narrative, shall have the effect of amending or modifying, in any way, Contract Time or milestone dates or of modifying or limiting, in any way, Design Builder's obligations under this Contract.

1.8.4 For rejected schedule update resubmittals, the County may request further information and justification and Design Builder shall, within three (3) Days, provide County with a complete written narrative response to the County's request discussing how the resubmittal addresses each of the remaining deficiencies noted in the schedule update resubmittal.

- 1.8.5 If the County does not accept Design Builder's schedule update resubmittal, and Design Builder disagrees with County's position, Design Builder has seven (7) Days from receipt of County's letter rejecting the revision to provide a written narrative providing full justification and explanation for the revision. Design Builder's failure to respond in writing within seven (7) Days of County's written rejection of a schedule revision shall constitute Design Builder's acceptance of County's position, and Design Builder thereby waives its rights to subsequently dispute or file a claim regarding the County's position. If Design Builder files a timely response as provided in this paragraph, and the parties are still unable to agree, Design Builder's sole right shall be to file a Claim as provided in Article 12 (Claims by Design Builder) of Document 00 72 53 (General Conditions).

## **1.9 RECOVERY SCHEDULE**

- 1.9.1 If the Schedule Update or Look Ahead Schedule shows Milestone completion more than fourteen (14) Days beyond the Contract Time, or any individual milestone completion dates, Design Builder shall within seven (7) Days, submit to County a Recovery Plan to recover the lost time. As part of this submittal, Design Builder shall provide a written narrative and a Recovery Schedule to recapture the lost time. The Recovery Plan shall propose revisions to the Contract Schedule for the next 60-day period to show how the Design Builder intends to bring the Work back on schedule. If the Recovery Schedule includes sequence changes, Design Builder shall provide a schedule diagram comparing the original Design Builder sequence to the revised sequence of the Work. The Recovery Schedule shall show the intended critical path; Design Builder shall secure and document appropriate Subcontractor and supplier consent to the Recovery Schedule; the narrative shall explain trade flow and construction flow changes, duration changes, added/deleted activities, critical path changes and identify all near critical paths and resource loading assumptions for major Subcontractors. The Recovery Plan shall also describe how the measures that the Design Builder intends to take to regain schedule compliance will be accomplished without additional cost to the County.
- 1.9.2 The Recovery Schedule shall not be incorporated into any Schedule update until County has reviewed the Recovery Schedule.
- 1.9.3 If County does not accept Design Builder's Recovery Schedule, County and Design Builder shall follow the procedures in paragraphs 1.8.4 and 1.8.5 above.
- 1.9.4 At County's discretion, Design Builder can be required to provide Subcontractor certifications for any Recovery Schedule affecting said Subcontractors.
- 1.9.5 Design Builder shall provide supervision, labor, equipment and materials, as necessary, to recover the lost time.
- 1.9.6 If Design Builder believes that any portion of the delay addressed in the Recovery Schedule is due to circumstances entitling Design Builder to additional time or money, it may seek a modification of the Contract Documents under Article 14 (Modifications of the Contract Documents) of Document 00 72 53 (General Conditions), or make a Claim for the same pursuant to Article 12 (Claims by Design Builder) of Document 00 72 53, and other applicable provisions of the Contract Documents.

## **1.10 TIME IMPACT EVALUATION FOR CHANGE ORDERS, AND OTHER DELAYS**

- 1.10.1 Any request for an adjustment of the Contract Time(s) submitted by Design Builder for changes or alleged delays shall be accompanied by a complete Time Impact Evaluation ("TIE") which includes both a written narrative and a hard and fully operational electronic copy of a schedule diagram depicting how the changed work affects other schedule activities. The schedule diagram shall show how Design Builder proposes to

incorporate the changed work in the schedule, and how it impacts the critical path on the current schedule update. Design Builder is responsible for requesting time extensions based on the TIE's impact on the critical path. The diagram must be tied to the main sequence of schedule activities to enable County to evaluate the impact of changed work to the scheduled critical path.

- 1.10.2 Design Builder shall comply with the requirements of Paragraph 1.10.1 for all types of delays such as, but not limited to, Design Builder/Subcontractor delays, claimed County or third party caused delays, adverse weather delays, strikes, procurement delays, fabrication delays, etc.
- 1.10.3 Design Builder shall be responsible for all costs associated with the preparation of TIEs, and the process of incorporating them into the current schedule update. Design Builder shall provide County with an operational electronic copy and five (5) hardcopies of each TIE. Design Builder's TIEs must be based on the as-built critical path as of the date of the alleged delay. The TIE shall also show the as-planned critical path at that time.
- 1.10.4 Once agreement has been reached on a TIE, the Contract Time will be adjusted accordingly. If agreement is not reached on a TIE, the Contract Time may be extended in an amount County allows, and Design Builder may submit a Claim for additional time claimed by Design Builder as provided in Document 00 72 53 (General Conditions).

#### **1.11 TIME EXTENSIONS**

- 1.11.1 Design Builder is responsible for requesting Contract Time extensions for events that, in the opinion of Design Builder, affect the critical path as shown on the then-current schedule update. Notice of time impacts shall be given in accord with Document 00 72 53 (General Conditions).
- 1.11.2 Where an event for which either Design Builder or County is responsible affects the projected Contract Time, Design Builder shall provide a written mitigation plan, including a schedule diagram, which explains how (e.g., increase crew size, overtime, etc.) the impact will be mitigated. Design Builder shall also include a detailed cost breakdown of the labor, equipment and material Design Builder would expend to mitigate the delay. Design Builder shall submit its mitigation plan to County within seven (7) Days from the date of discovery of the impact. Design Builder is responsible for the cost to prepare the mitigation plan.
- 1.11.3 Design Builder's failure to give notice of a delay, request time, provide TIE, or provide the required mitigation plan will result in Design Builder waiving its right to a time extension and recovery of cost to mitigate the delay.
- 1.11.4 Design Builder shall be responsible to provide timely and proper notice to the County of all events that could result in Contract Time extensions and shall comply with requirements as specified in Section 00 72 53 (General Conditions), Paragraph 4, Article 15.
- 1.11.5 No time will be granted under the Contract Documents for cumulative effect of impacts or changes.
- 1.11.6 County will not be obligated to consider any time extension request unless all requirements of Contract Documents are complied with.
- 1.11.7 Failure of Design Builder to perform in accordance with the current schedule update shall not be excused by submittal of time extension requests.

#### **1.12 PROJECT STATUS REPORTING**

- 1.12.1 Monthly. In addition to submittal requirements for scheduling identified in this Section 01 32 26, provide a monthly project status report (i.e., written narrative report) to be submitted in conjunction with each Schedule as specified herein in electronic and hard copy. Written status reports shall include:
- 1.12.1.1 Status of major Project components (percent complete, amount of time ahead or behind schedule) and an explanation of how Project will be brought back on schedule if delays have occurred.
  - 1.12.1.2 Progress made on critical activities indicated on each Schedule, including inspections.
  - 1.12.1.3 Explanations for any lack of work on critical path activities planned to be performed during last month.
  - 1.12.1.4 Explanations for any schedule changes, including changes to logic or to activity durations.
  - 1.12.1.5 List of critical activities scheduled to be performed during the next month.
  - 1.12.1.6 Status of major material and equipment procurement.
  - 1.12.1.7 Description of problem areas, current and anticipated delaying factors and their impacts, and an explanation of corrective action taken.
  - 1.12.1.8 Any proposed revisions for a recovery plan.
  - 1.12.1.9 Design Builder may include any other information pertinent to status of Project.
  - 1.12.1.10 Design Builder shall produce additional status reports as requested by County at no additional cost.
  - 1.12.1.11 Status reports, and the information contained therein, shall not be construed as claims, notice of claims, notice of delay, or requests for changes or compensation.
- 1.12.2 Daily Construction Reports: At the close of each workday provide County with report (on Design Builder's County-approved form) of a description of work activities by location for the previous work-day including the following:
- 1.12.2.1 List of subcontractors at Project site.
  - 1.12.2.2 List of separate contractors at Project site.
  - 1.12.2.3 Count of personnel at Project site.
  - 1.12.2.4 Equipment at Project site.
  - 1.12.2.5 Material deliveries.
  - 1.12.2.6 High and low temperatures and general weather conditions.
  - 1.12.2.7 Rainfall, if any
  - 1.12.2.8 Total number of inclement weather days to date
  - 1.12.2.9 Accidents.
  - 1.12.2.10 Meetings and significant decisions.

- 1.12.2.11 Unusual events (refer to special reports).
  - 1.12.2.12 Stoppages, delays, shortages, and losses.
  - 1.12.2.13 Meter readings and similar recordings.
  - 1.12.2.14 Inspections
  - 1.12.2.15 Emergency procedures.
  - 1.12.2.16 Orders, visits and requests of authorities having jurisdiction.
  - 1.12.2.17 Change Orders received and implemented.
  - 1.12.2.18 Services connected and disconnected.
  - 1.12.2.19 Equipment or system tests and startups.
  - 1.12.2.20 Partial Completions and occupancies.
  - 1.12.2.21 Substantial Completions authorized.
  - 1.12.2.22 Results of construction monitoring activities including, at a minimum:
  - 1.12.2.23 Noise control
  - 1.12.2.24 Dust control
- 1.12.3 Material Location Reports: At weekly intervals, prepare and submit a comprehensive list of materials delivered to and stored at Project site. List shall be cumulative, showing materials previously reported plus items recently delivered. Include with list a statement of progress on and delivery dates for materials or items of equipment fabricated or stored away from Project site.
- 1.12.4 Field Condition Reports: Immediately on discovery of a difference between field conditions and the Contract Documents, prepare and submit a detailed report. Include a detailed description of the differing conditions, together with recommendations for changing or proposed changes to the Construction Documents.
- 1.12.5 Reporting Unusual Events: When an event of an unusual and significant nature occurs at Project site, whether or not related directly to the Work, prepare and submit a special report. List chain of events, persons participating, response by Design Builder's personnel, evaluation of results or effects, and similar pertinent information. Advise County in advance when these events are known or predictable.

## **PART 2 - PRODUCTS**

Not used.

## **PART 3 - EXECUTION**

Not used.

County of Alameda - BIA  
Chico's Area Valley Transit Authority  
Public Parking Garage Project

Sanford Shattuck Schedule  
May 10, 2016

Task	Duration	Start	End
1. Site Plan	10	5/10/16	5/20/16
2. Preliminary Design	10	5/20/16	6/10/16
3. Final Design	10	6/10/16	7/10/16
4. Construction	10	7/10/16	8/10/16
5. Testing	10	8/10/16	9/10/16
6. Commissioning	10	9/10/16	10/10/16
7. Operation	10	10/10/16	11/10/16
8. Maintenance	10	11/10/16	12/10/16
9. Decommissioning	10	12/10/16	1/10/17
10. Final Report	10	1/10/17	2/10/17
11. Project Closeout	10	2/10/17	3/10/17
12. Project Review	10	3/10/17	4/10/17
13. Project Summary	10	4/10/17	5/10/17
14. Project Evaluation	10	5/10/17	6/10/17
15. Project Improvement	10	6/10/17	7/10/17
16. Project Feedback	10	7/10/17	8/10/17
17. Project Lessons Learned	10	8/10/17	9/10/17
18. Project Archiving	10	9/10/17	10/10/17
19. Project Reporting	10	10/10/17	11/10/17
20. Project Communication	10	11/10/17	12/10/17
21. Project Documentation	10	12/10/17	1/10/18
22. Project Review	10	1/10/18	2/10/18
23. Project Summary	10	2/10/18	3/10/18
24. Project Evaluation	10	3/10/18	4/10/18
25. Project Improvement	10	4/10/18	5/10/18
26. Project Feedback	10	5/10/18	6/10/18
27. Project Lessons Learned	10	6/10/18	7/10/18
28. Project Archiving	10	7/10/18	8/10/18
29. Project Reporting	10	8/10/18	9/10/18
30. Project Communication	10	9/10/18	10/10/18
31. Project Documentation	10	10/10/18	11/10/18
32. Project Review	10	11/10/18	12/10/18
33. Project Summary	10	12/10/18	1/10/19
34. Project Evaluation	10	1/10/19	2/10/19
35. Project Improvement	10	2/10/19	3/10/19
36. Project Feedback	10	3/10/19	4/10/19
37. Project Lessons Learned	10	4/10/19	5/10/19
38. Project Archiving	10	5/10/19	6/10/19
39. Project Reporting	10	6/10/19	7/10/19
40. Project Communication	10	7/10/19	8/10/19
41. Project Documentation	10	8/10/19	9/10/19
42. Project Review	10	9/10/19	10/10/19
43. Project Summary	10	10/10/19	11/10/19
44. Project Evaluation	10	11/10/19	12/10/19
45. Project Improvement	10	12/10/19	1/10/20
46. Project Feedback	10	1/10/20	2/10/20
47. Project Lessons Learned	10	2/10/20	3/10/20
48. Project Archiving	10	3/10/20	4/10/20
49. Project Reporting	10	4/10/20	5/10/20
50. Project Communication	10	5/10/20	6/10/20
51. Project Documentation	10	6/10/20	7/10/20
52. Project Review	10	7/10/20	8/10/20
53. Project Summary	10	8/10/20	9/10/20
54. Project Evaluation	10	9/10/20	10/10/20
55. Project Improvement	10	10/10/20	11/10/20
56. Project Feedback	10	11/10/20	12/10/20
57. Project Lessons Learned	10	12/10/20	1/10/21
58. Project Archiving	10	1/10/21	2/10/21
59. Project Reporting	10	2/10/21	3/10/21
60. Project Communication	10	3/10/21	4/10/21
61. Project Documentation	10	4/10/21	5/10/21
62. Project Review	10	5/10/21	6/10/21
63. Project Summary	10	6/10/21	7/10/21
64. Project Evaluation	10	7/10/21	8/10/21
65. Project Improvement	10	8/10/21	9/10/21
66. Project Feedback	10	9/10/21	10/10/21
67. Project Lessons Learned	10	10/10/21	11/10/21
68. Project Archiving	10	11/10/21	12/10/21
69. Project Reporting	10	12/10/21	1/10/22
70. Project Communication	10	1/10/22	2/10/22
71. Project Documentation	10	2/10/22	3/10/22
72. Project Review	10	3/10/22	4/10/22
73. Project Summary	10	4/10/22	5/10/22
74. Project Evaluation	10	5/10/22	6/10/22
75. Project Improvement	10	6/10/22	7/10/22
76. Project Feedback	10	7/10/22	8/10/22
77. Project Lessons Learned	10	8/10/22	9/10/22
78. Project Archiving	10	9/10/22	10/10/22
79. Project Reporting	10	10/10/22	11/10/22
80. Project Communication	10	11/10/22	12/10/22
81. Project Documentation	10	12/10/22	1/10/23
82. Project Review	10	1/10/23	2/10/23
8			





**DIVISION 1 GENERAL REQUIREMENTS**

**SECTION 01 41 00**

**REGULATORY REQUIREMENTS**

**PART 1 - GENERAL**

**1.1 SUMMARY**

- 1.1.1 This section includes regulatory requirements applicable to the Contract Documents.
- 1.1.2 Specific reference in the specifications to codes and regulations or requirements of regulatory agencies shall mean the latest printed edition of each adopted by the regulatory agency in effect at the date of submission to REGULATORY AGENCY for plan review even if an earlier version was used in development of, and/or specified elsewhere in, the Project Manual or Bridging Documents.
- 1.1.3 Should any conditions develop not covered by the Contract Documents wherein the finished work will not comply with current codes, a change order detailing and specifying the required work shall be submitted to and approved by the County before proceeding with the Work.

**1.2 REFERENCES TO REGULATORY REQUIREMENTS**

- 1.2.1 Codes, laws, ordinances, rules and regulations referred to shall have full force and effect as though printed in full in these specifications. Codes, laws, ordinances, rules and regulations are not furnished to the Design Builder, since the Design Builder is assumed to be familiar with their requirements. The listing herein of applicable codes, laws and regulations for hazardous waste abatement work in the Contract Documents is supplied to the Design Builder as a courtesy and shall not limit the Design Builder's responsibility for complying with all applicable laws, regulations or ordinances having application to the Work. Where conflict among the requirements or with these specifications exists, the most stringent requirements shall be used.
- 1.2.2 Conform to referenced codes, laws, ordinances, rules and regulations.
- 1.2.3 Precedence:
  - 1.2.3.1 Where specified requirements differ from the requirements of applicable codes, ordinances and standards, the more stringent requirements shall take precedence.
  - 1.2.3.2 Where the Drawings, Plans or Specifications require or describe products or execution of better quality, higher standard or greater size than required by applicable codes, ordinances and standards, the Drawings, Plans and Specifications shall take precedence so long as such increase is legal.

- 1.2.3.3 Where no requirements are identified in the Drawings, Plans or Specifications, comply with all requirements of applicable codes, ordinances and standards of governing authorities having jurisdiction.

### 1.3 CODES

- 1.3.1 Codes which apply to the Contract Documents include, but are not limited to, the following:

~~1.3.1.1 Cal. Building Code (Title 15, Part 2, Title 24, C.C.R., including, without means of limitation, sections 16A, 102A.23, 308, 420A, 504 506, 904.2.6, 1019 and 1604)~~

1.3.1.2 Cal. Electrical Code (Part 5, Title 24, C.C.R.)

1.3.1.3 Cal. Mechanical Code (Part 3, Title 24, C.C.R.)

1.3.1.4 Cal. Plumbing Code (Part 4, Title 24, C.C.R.)

1.3.1.5 Cal. Elevator Safety Regulations (Part 7, Title 24, C.C.R.)

~~1.3.1.6 International Building Code~~

~~1.3.1.7 Uniform Plumbing Code~~

~~1.3.1.8 Uniform Mechanical Code~~

~~1.3.1.9 National Electrical Code~~

1.3.1.10 Cal. Energy Code

1.3.1.11 Cal. Fire Code

1.3.1.12 **2022 California Green Building Code**

1.3.1.13 **2022 National Fire Protection Association (NFPA) 72 – Fire Alarms**

1.3.1.14 **2022 National Fire Protection Association (NFPA) 13 – Fire Sprinklers**

1.3.1.15 **2022 ADA Regulation for Title III, Code of Federal Regulations**

1.3.1.16 **2022 ADA Regulation for Title II, Federal Register**

1.3.1.17 **Other County, State and Federal Regulations, as commonly interpreted and enforced by the Authorities Having Jurisdiction.**

1.3.1.18 **C.3 Stormwater Technical Guidance for Alameda County.**

### 1.4 LAWS, ORDINANCES, RULES AND REGULATIONS

- 1.4.1 During prosecution of Work to be done under the Contract Documents, comply with applicable laws, ordinances, rules and regulations, including, but not limited to, the following:

1.4.2 Federal

- 1.4.2.1 Americans With Disabilities Act of 1990 CADA
- 1.4.2.2 29 CFR, Section 1910.1001, Asbestos
- 1.4.2.3 40 CFR, Subpart M, National Emission Standards for Asbestos
- 1.4.2.4 Executive Order 11246
- 1.4.2.5 Federal Endangered Species Act
- 1.4.2.6 Clean Water Act
- 1.4.2.7 Federal Occupational Safety & Health Administration Act
- 1.4.3 State of California
  - 1.4.3.1 California Code of Regulations, Titles 5, 8, 12, 13, 15, 17, 19, 20, 21, 22, 23 24 and 25
  - 1.4.3.2 California Public Contract Code
  - 1.4.3.3 California Health and Safety Code
  - 1.4.3.4 California Government Code
  - 1.4.3.5 California Labor Code
  - 1.4.3.6 California Civil Code
  - 1.4.3.7 California Code of Civil Procedure
  - 1.4.3.8 CPUC General Order 95, Rules for Overhead Electric Line Construction
  - 1.4.3.9 CPUC General Order 128, Rules for Construction of Underground Electric Supply and Communications Systems
  - 1.4.3.10 California Occupational Safety and Health Administration (Cal OSHA)
  - 1.4.3.11 Occupational Safety and Health Administration (OSHA): Hazard Communications Standards
  - 1.4.3.12 California Endangered Species Act
  - 1.4.3.13 Water Code
  - 1.4.3.14 Fish and Game Code
- 1.4.4 State of California Agencies
  - 1.4.4.1 State and Consumer Services Agency
  - 1.4.4.2 Office of the State Fire Marshal
  - 1.4.4.3 Office of Statewide Health Planning and Development
  - 1.4.4.4 CalTrans
  - 1.4.4.5 California Board of Corrections
  - 1.4.4.6 California Board of Corrections Fire Marshal

1.4.4.7 Department of Fish and Game

1.4.5 Local Agencies:

1.4.5.1 County of Alameda

1.4.5.2 Alameda County Fire Marshal

1.4.5.3 Bay Area Air Quality Management District

1.4.6 Other Requirements:

1.4.6.1 2006 AIA Guideline for Healthcare Design.

1.4.6.2 National Fire Protection Association (NFPA): Pamphlet 101, Life Safety.

1.4.6.3 The following NFPA Standards apply:

NFPA Standard	Edition
13 Installation of Sprinkler Systems	2000
14 Installation of Standpipes and Hose Systems	1999
20 Installation of Centrifugal Fire Pumps	1995
24 Installation of Private Fire Service Mains	1995
50 Bulk Oxygen Systems	1996
72 National Fire Alarm Code (as amended)	1999
80 Fire Doors and Fire Windows	1999
92A Smoke Control Systems	2000
99 Health Care Facilities, Chapter 4 – Gas & Vacuum Systems	1999
2001 Clean Agent Fire Extinguishing Systems	2000

1.4.6.4 The Design Builder shall comply with Standard Specifications such as California Standard Specification, ASTM, ANSI, AASHTO, AISC, Commercial Standards, Federal Specifications, NFPA, NEMA, AWWA, UL, and the like

1.4.6.5 References on the Drawings, Plans or in the Specifications to “code” or “building code” not otherwise identified shall mean the codes specified in this Section 01 41 00, together with all additions, amendments, changes, and interpretations adopted by code authorities of the jurisdiction.

- 1.4.7 Design Builder shall provide access to all of the foregoing within twenty-four (24) hours and maintain a copy of each of the above documents in the Design Builder's field office.
- 1.4.8 It shall be understood that manufacturers, producers, and their agents of materials are required either to have such specifications available for reference or to be fully familiar with their requirements as pertains to their project or material
- 1.4.9 Other Applicable Laws, Ordinances and Regulations:
  - 1.4.9.1 Work shall be accomplished in conformance with all applicable laws, ordinances, rules and regulations of Federal, State and local governmental agencies and jurisdictions having authority over the Project.
  - 1.4.9.2 Work shall be accomplished in conformance with all rules and regulations of public utilities and utility districts.
  - 1.4.9.3 Where such laws, ordinances rules and regulations require more care or greater time to accomplish Work, or require better quality, higher standards or greater size of products, Work shall be accomplished in conformance to such requirements with no change to the Contract Time and Contract Sum, except where changes in laws, ordinances, rules and regulations occur subsequent to the time of opening of the bids.
- 1.4.10 Change Orders and Claims:
  - 1.4.10.1 The Public Contract Code, including but not limited to § 7105(d)(2), and Government Code § 930.2 et seq., apply to all contract procedures for changes, time extensions, change orders (time or compensation) and claims. Federal law (United States v. Joseph A. Holpuch Co., 328 US 234 (1946)) shall supplement but not supercede California law on these requirements.
  - 1.4.10.2 Any change, waiver, or omission to implement contract change order and claim procedures shall have no legal effect unless expressly permitted in a fully executed change order approved by County and approved in writing by the County Counsel.
- 1.5 OTHER SPECIAL GRANT FUNDING REQUIREMENTS
  - 1.5.1 Please refer to Document 00 65 20 - GRANT FUNDING CONTRACT REQUIREMENTS for specific regulatory requirements that will apply to this Project.
- 1.6 DEFERRED APPROVAL
  - 1.6.1 Where noted in technical Specification sections, certain items of material may require REGULATORY AGENCY deferred approval pending submittal of shop drawings. It is the County's intent to minimize the number of deferred submittals for this project. For these items, Contractor shall submit details and structural calculations for anchorage, to

comply with State of California Code of Regulations Title 24, including Table 16-B. Calculations shall be made by a Structural Engineer registered in the State of California.

**1.7 CONFLICTS**

1.7.1 Between referenced regulatory requirements: Comply with the one establishing the more stringent requirement.

1.7.2 Between referenced regulatory requirements and the Contract Documents: Comply with the one establishing the more stringent requirement.

**1.8 REQUIRED PROVISIONS ON CONTRACT CLAIM RESOLUTION**

Refer to Section 12: Claims by Design Build Entity of Document 00 72 53 General Conditions for all provisions of Contract Claims by Claims by Design Build Entity

**1.9 COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT**

1.9.1 The Design Builder 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 Design Builder, must be accessible to the disabled public. The Design Builder shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Design Builder shall not discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Design Builder, its employees, agents or assigns shall constitute a material breach of this Agreement.

**PART 2 - PRODUCTS**

Not used.

**PART 3 - EXECUTION**

Not used.

END OF SECTION