

**SPECIFICATIONS AND OTHER CONTRACT DOCUMENTS**

**ALAMEDA COUNTY PROJECT #13023**

**CONSTRUCTION MANAGER AT RISK**

**CHERRYLAND COMMUNITY CENTER  
278 Hampton Road  
Hayward, California 94541**

**MANDATORY PRE-PROPOSAL MEETING**

**July 6, 2016 at 11:00 a.m.**

**or**

**July 7, 2016 at 2:00 p.m.**

**Location:**

**1111 Jackson Street, Oakland, CA 94612**

**ALAMEDA COUNTY  
GENERAL SERVICES AGENCY  
TECHNICAL SERVICES DEPARTMENT**

**1401 Lakeside Drive, #800  
Oakland, CA 94612**

**PHONE: 510-208-958 FAX: 510-208-3995**

**ARCHITECTURE AND ENGINEERING**

**Noll and Tam Architects  
729 Heinz Ave.**

**Berkeley, CA 94710**

**PHONE: 510-52-2200 FAX: 510-542-2201**



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Sheet number

File number

Description

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**LIST OF SCHEDULES**

SCHEDULES

Project Duration: [XXXX] Calendar Days

Milestones: [LIST]

<u>Sheet number</u>	<u>File number</u>	<u>Description</u>
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END OF DOCUMENT

DOCUMENT 00 22 19

**ENHANCED CONSTRUCTION OUTREACH PROGRAM (ECOP)**

**GENERAL**

**1. PURPOSE**

1.1 It is the express purpose of the Enhanced Construction Outreach Program (ECOP) to encourage the participation in the County of Alameda, General Services Agency (GSA) capital projects of

- Minority Owned Business Enterprise (MBE),
- Woman Owned Business Enterprise (WBE),
- Local Business Enterprise (LBE) and
- 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 22 19 provisions contained herein.

1.3 In the event of conflict between the terms of this Section 00 22 19 and the PROJECT STABILIZATION / COMMUNITY BENEFITS AGREEMENT for the COUNTY OF ALAMEDA, 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 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 all ECOP goals identified herein shall be required to demonstrate to the satisfaction of the County that all good faith efforts (GFEs) were made in accordance with the criteria listed in Section 7.9, GFE 1-9. Failure of the CMR to demonstrate a good faith effort may result in the bid being deemed non-responsive.

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**3. 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 by local agencies identified or recognized by the County as having effective certification programs. When the State of California SBE definition is met, validation of the current certification by one of the following local agencies must be provided with the bid response:

Bay Area Rapid Transit (BART)  
Office of Community Investment and Infrastructure<sup>1</sup>,  
The (CPUC) Supplier Clearinghouse  
Western Regional Minority Supplier Development Council (WRMSDC)  
Women’s Business Enterprise National Council (WBENC)

3.3 MINORITY PERSON

3.3.1 Minority person, for purposes of this section, means Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts and Native Hawaiians), Asian-Pacific Americans

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<sup>1</sup> Successor Agency to San Francisco Redevelopment Agency

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(including persons whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia and Taiwan).

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 \$14 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:

Alameda County Transportation Commission (Alameda CTC)  
California Department of General Services (DGS)  
Office of Community Investment and Infrastructure,  
Port of Oakland

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,

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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 CMR 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 CMR 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 CMR plans to perform all the work with the CMR’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 CMR **may not** apply the percentage of the CMR’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 CMRs 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

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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 CMR 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 CMR plans to perform all the work with the CMR'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 CMR **may not** apply the percentage of the CMR'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 CMRs 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 CMR 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 CMR 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 CMR 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

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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 CMR 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 CMR 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 The CMR 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 and/or a part of the CMR LBE participation.

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

5.1 CMRs who are certified small local businesses (S/LBE) shall be eligible to receive a 5% bid preference. CMRs 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, BUT UNDER \$1M)**

PURPOSE

6.1 The County of Alameda, General Services Agency (GSA), Technical Services Department (TSD) 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,



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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 CMRs 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 CMR to make a good faith effort to achieve the specified participation of M/W/S/LBE subcontractors, manufacturers, suppliers and/or truckers shall be grounds for determining that the bid is non-responsive.
- 7.2 Upon request from GSA, the two responsible CMR with the best value proposals must submit to the Project Manager documentation to support the ECOP goals met, and the GFEs made. The documentation submitted by each CMR shall be referred to as the ECOP Package.
- 7.3 ECOP bid submittal evaluation will initiate following GSA’s determination of the two (2) responsible CMRs who submitted the best value proposals and their submission of the ECOP Package, which shall include, but not be 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 is to be submitted by the two (2) responsible CMRs who submitted the best value proposals to GSA no later than 2:00 p.m. on the second business day following notification and request by GSA.
- 7.3.1 The individual dollar amounts to be subcontracted to the M/W/S/LBE listed in the CMR’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 assigned Project Manager.
- 7.4 After the bids are opened, the M/W/S/LBE subcontractors, manufacturers, suppliers and/or truckers who bid to the two (2) responsible bidders with the apparent best value proposals are required to provide the amounts of their bids to the County for the purposes of verification. 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.

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- 7.5 Each ECOP Package will be reviewed and evaluated by GSA or its agents within approximately five (5) business days of receipt unless additional time is needed to verify the submittals. CMRs must meet all the ECOP goals **OR** make all the 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 CD or 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 CD or flash drive along with the hard copy signature page and supporting documentation.
  - 7.6.2 Supporting certification documentation for the CMR and each subcontractor, manufacturer, supplier and/or trucker M/W/S/LBEs submitted in the order they are listed on the ECOP forms **must be submitted as hardcopy**
    - 7.6.2.1 To be considered towards meeting the ECOP goals CMRs must submit:
      - 7.6.2.1.1 Acceptable certifying documentation for the CMR 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 date).
      - 7.6.2.1.2 Evidence that manufacturers, suppliers, and/or truckers are providing goods or services to subcontractors (for example, letter of intent, agreement)
  - 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 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 GSA reserves the right, as it may deem appropriate and necessary, to contact the two responsible bidders who submitted the apparent two best value proposals during the evaluation process for clarification and/or submission of additional ECOP Goals or GFE documentation.
- 7.8 ECOP GOALS / GOOD FAITH EFFORTS REQUIRED

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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></p> <p>LBE participation may consist of the CMR 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 proposals 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></p> <p>Certified SBEs <b>must be Local</b> (S/LBE) to be considered. S/LBE participation may consist of the CMR 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;\$14 Million annual gross revenues (over the last three years).</p>	<ul style="list-style-type: none"> <li>• Same as LBE <i>PLUS</i></li> <li>• Current certification document or letter with SBE designation*</li> </ul>
3	<p><b>15% Minority-Owned Business Enterprise (MBE) <u>Subcontractors</u></b></p> <p>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>	<ul style="list-style-type: none"> <li>• Current certification document, letter, etc., with MBE designation**</li> </ul>

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	<p>An MBE is a minority-owned business certified by one of the agencies listed below. An MBE can also be an SBE or LBE for purposes of meeting the SBE or LBE subcontracting goals, but an MBE cannot also be considered a WBE.**</p>	
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 minority-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>

\* SBE certification from the following agencies is accepted: Alameda County Transportation Commission (Alameda CTC), California Department of General Services (DGS), Office of Community Investment and Infrastructure, Port of Oakland, *and* when the State SBE definition is met, Alameda County (SLEB certification).

\*\* When the State SBE definition is met MWBE certification from the following agencies is accepted:

Bay Area Rapid Transit (BART), Office of Community Investment and Infrastructure, the (CPUC) Supplier Clearinghouse, Western Regional Minority Supplier Development Council (WRMSDC), Women’s Business Enterprise National Council (WBENC).

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. For additional information regarding the ECOP Package submittals contact the GSA Contract Compliance Officer listed in Section IV below.

<b>Required Good Faith Effort Indicators</b>	<b>Examples of Acceptable Documentation</b>
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<p>1. The CMR attended mandatory pre-solicitation or pre-proposal meetings that were scheduled by the local agency to inform all CMRs of the ECOP requirements for the project for which the contract will be awarded.</p>	<ul style="list-style-type: none"> <li>• Copy of pre-proposal 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>
<p>2. The CMR 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.</p>	<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>
<p>3. The CMR 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.</p>	<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 CMR 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 CMR 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 a 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 CMR 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>

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<p>6. The CMR 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 CMR 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 CMR 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 CMR 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 CMR.</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</li> </ul>

7.10 The performance by a CMR of the GFE Indicators specified in the table above shall create a rebuttable presumption, affecting the burden of producing evidence, that a CMR has made a good faith effort to comply with the goals and requirements relating to participation by M/W/S/LBEs established pursuant to Section 4 herein.

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**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 CMR 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 CMR'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 Purpose

9.1 The CMR 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 CMR 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 CMR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

9.2 CMR 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**

**ALAMEDA COUNTY GSA-TSD**

**SUPPLEMENTARY INSTRUCTIONS TO CMRs  
ENHANCED CONSTRUCTION OUTREACH PROGRAM  
DOCUMENT 00 22 19**

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- 1.1 The following provisions shall apply to all contracts subject to the provisions of Section I and/or Section IV.

**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 CMR 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 is 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 CMRs 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 CMR's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize Elation Systems.
  - 2.4.1 For further information, please see the Elation Systems training schedule online at [http://www.elationsys.com/elationsys/support\\_1.htm](http://www.elationsys.com/elationsys/support_1.htm) or call Elation Systems at (925) 924-0340.
  - 2.4.2 If you have questions regarding the utilization of the Elation Systems, please contact the Project Manager. For system support visit Elation Systems online at <http://www.elationsys.com/> or at (925) 924-0340.

**3. MEETINGS**



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

**4. INFORMATION AND RECORDS**

- 4.1 For the purposes of determining compliance with this program, the CMR shall provide the County with access to all records and documents that relate to M/W/S/LBE participation, and to all records of employment advertisements, application forms, tests and other selection techniques used to hire, transfer, promote, train or retain personnel, and other pertinent records and data pertaining to the project under consideration. To the extent permitted by applicable law, proprietary information will be safeguarded.
- 4.2 Upon request, the CMR must submit the following information to the General Services Agency on Alameda County approved forms. All subcontractor submittals must be through the CMR.
  - 4.2.1 M/WBE Subcontractor Participation Information and S/LBE Participation Information, (ECOP Forms 101A and 101B attached) submitted no later than 2:00 p.m. on the second business day following notification and request by GSA.
  - 4.2.2 Subcontractor Information (ECOP Form 102A attached) submitted no later than 2:00 p.m. on the second business day following notification and request by GSA .
  - 4.2.3 Checklist for Review of Good Faith Efforts (ECOP Form 102B attached) submitted no later than 2:00 p.m. on the second business day following notification and request by GSA.
  - 4.2.4 Certified weekly payroll records (AAP Form 103 and 103A) showing the wages paid to each employee, the employee's job classification, gender and ethnic code. Payrolls will be submitted by the CMR and each subcontractor via the CMR. This provision applies to all classifications, including truckers. A Fringe Benefits Statement (AAP Form 105A) must be submitted by each CMR/subcontractor with the first certified payroll.
- 4.3 Prevailing Wage Information Sheet (AAP Form 104) for prevailing wage rates for both CMR and Subcontractors.
- 4.4 M/W/S/LBE Utilization, when required (AAP Form 106-106A).

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4.5 Equal Employment Policy (AAP Form 107) completed by both CMR and Subcontractors.

**5. NONDISCRIMINATION POLICY FORM**

5.1 The CMR must post a Nondiscrimination Policy in a conspicuous place at each construction site.

**6. SUBSTITUTION OF M/W/S/LBE FIRMS**

6.1 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 the provisions of Section I and/or Section IV.

**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 CMR 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 CMR for the purpose of determining whether the CMR is out of compliance. If after the meeting the CMR is found to be out of compliance, the CMR will be notified of a public hearing. The public hearing will be held before the Board of Supervisors with a minimum five calendar-day notice given to the CMR. If the Board of Supervisors finds that there has been a violation, the County will notify the CMR in writing of the sanctions to be imposed by the Board.

2.2 In addition, the County shall deem a finding by the Fair Employment Practice Commission that there was willful violation of the California Fair Employment Act also to be a violation by the CMR of the ECOP requirements of the contract, and such violation shall be subject to the sanctions provided herein.

**3. SANCTIONS**

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- 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 CMR 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 CMR 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 CMR.
  - 3.1.4 Declare that the CMR is not a responsible CMR, and is ineligible to make bids on future County contracts for a stated period of time or until the CMR 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, the County will
  - 1.1.1 E-mail the Notice to CMRs to vendors in the County Vendor Database and other sources. Advertise the project once a week for at least 2 consecutive weeks in a newspaper of general circulation in the county where the project is located, trade organizations and chambers of commerce, and plan rooms. Notice of this project will also be posted on the County Current Contracting Opportunities and Calendar of Events websites (see website URL addresses below).
  - 1.1.2 Incorporate a networking and informational component in the mandatory 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**

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

**Asian American Contractors Association**

Juliana Choy Sommer, President

(415) 642-1818

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

460 Hegenberger Road, Suite 730

Oakland, CA 94621

(510) 686-2555

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

**Women’s Business Enterprise National Council (WBENC)**

WBE certifications only – [www.wbenc.org](http://www.wbenc.org)

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/purchasing/bid_content/ContractOpportunities.jsp">http://www.acgov.org/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> -

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<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>

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**CMR INFORMATION AND ACCEPTANCE**

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

The undersigned has read and agrees to the Supplementary Instructions to CMRs – Enhanced Construction Outreach Program, Document 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 CMR: \_\_\_\_\_

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

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

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

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

Type of Entity / Organizational Structure (check one):

- |  |  |
|--|--|
| <input type="checkbox"/> Corporation                   | <input type="checkbox"/> Joint Venture       |
| <input type="checkbox"/> Limited Liability Partnership | <input type="checkbox"/> Partnership         |
| <input type="checkbox"/> Limited Liability Corporation | <input type="checkbox"/> Non-Profit / Church |
| <input type="checkbox"/> Other: _____                  |  |

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

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

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

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Primary Contact Information:

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

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

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

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

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

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

DOCUMENT 00 31 19

**EXISTING CONDITIONS INFORMATION**

**1. Summary**

This document describes existing conditions at or near the Project, and use of information available regarding existing conditions. This document is **not** part of the Contract Documents. See General Conditions for definition(s) of terms used herein.

**2. Reports and Information on Existing Conditions**

- 2.1. Documents providing a general description of the Site and conditions of the Work may have been collected by County its consultants, contractors, and tenants. These documents may include previous contracts, contract specifications, tenant improvement contracts, as-built drawings, utility drawings, and information regarding underground facilities.
- 2.2. Information regarding existing conditions may be inspected at the County offices or the Construction Manager's offices, if any, and copies may be obtained at cost of reproduction and handling upon CMR's agreement to pay for such copies. These reports, documents, and other information are **not** part of the Contract Documents.
- 2.3. Information regarding existing conditions may also be included in the Project Manual, but shall **not** be considered part of the Contract Documents.
- 2.4. The reports and other data or information regarding existing conditions and underground facilities at or contiguous to the Project are the following:
  - 2.4.1. Construction Drawings-75% Progress Set-Revision 3,  
by Noll & Tam Architects, dated 05/17/16.
  - 2.4.2. Survey of Project Site (as sheet C0.01 in 75% Drawing Set),  
by Lea & Braze Engineers, Revision 2 dated 01-15-14
  - 2.4.3. Survey of Parking Lot Site (as sheet C0.02 in 75% Drawing Set),  
by Lea & Braze Engineers, Revision 2 dated 01-20-14
  - 2.4.4. Hazardous Material Reports  
- to be submitted in Addendum 1

**3. Use of Information**

- 3.1. Information regarding existing conditions was obtained only for use of County and its consultants, contractors, and tenants for planning and design and is **not** part of the Contract Documents.



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- 3.2. County does not warrant, and makes no representation regarding, the accuracy or thoroughness of any information regarding existing conditions. CMR represents and agrees that in submitting a proposal it is not relying on any information regarding existing conditions supplied by County.
- 3.3. Under no circumstances shall County be deemed to warrant or represent existing above-ground conditions, as-built conditions, or other actual conditions, verifiable by independent investigation. These conditions are verifiable by CMR by the performance of its own independent investigation, which CMR must perform as a condition to proposing, and CMR should not and shall not rely on this information or any other information supplied by County regarding existing conditions.
- 3.4. Any information shown or indicated in the reports and other data supplied herein with respect to existing underground facilities at or contiguous to the Project may be based upon information and data furnished to County by the County's employees and/or consultants or builders of such underground facilities or others. County does not assume responsibility for the completeness of this information, and CMR is solely responsible for any interpretation or conclusion drawn from this information.
- 3.5. County shall be responsible only for the general accuracy of information regarding underground facilities, and only for those underground facilities that are owned by County, and only where CMR has conducted the independent investigation required of it pursuant to the Contract Documents, and discrepancies are not apparent.

**4. Investigations/Site Examinations**

- 4.1. Before submitting a Proposal, each CMR is responsible for conducting or obtaining any additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the Site or otherwise, that may affect cost, progress, performance, or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by CMR and safety precautions and programs incident thereto or that CMR deems necessary to determine its Proposal for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of the Contract Documents.
- 4.2. On request, County will provide each CMR access to the Site to conduct such examinations, investigations, explorations, tests, and studies, as each CMR deems necessary for submission of a Proposal. CMRs must fill all holes and clean up and restore the Site to its former condition upon completion of its explorations, investigations, tests, and studies. Such investigations and Site examinations may be performed during any and all Site visits indicated in the Notice to CMRs and only under the provisions of the Contract Documents, including, but not limited to, proof of insurance and obligation to indemnify against claims arising from such work, and County's prior approval.

END OF DOCUMENT



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-Reports of explorations and tests of subsurface conditions at or contiguous to the Site that have been utilized by County in preparation of the Contract Documents.

-Drawings of physical conditions in or relating to existing subsurface structures (except underground facilities) that are at or contiguous to the Site and have been utilized by County in preparation of the Contract Documents.

4.2. CMR may rely upon the general accuracy of the "technical data" contained in the reports and drawings identified above, but only insofar as it relates to subsurface conditions, provided CMR has conducted the independent investigation required pursuant to Instructions to CMRs, and discrepancies are not apparent. The term "technical data" in the referenced reports and drawings shall be limited as follows:

4.2.1. The term "technical data" shall include actual reported depths, reported quantities, reported soil types, reported soil conditions, and reported material, equipment or structures that were encountered during subsurface exploration. The term "technical data" does not include, and CMR may not rely upon, any other data, interpretations, opinions or information shown or indicated in such drawings or reports that otherwise relate to subsurface conditions or described structures.

4.2.2. The term "technical data" shall not include the location of underground facilities.

4.2.3. CMR may not rely on the completeness of reports and drawings for the purposes of proposing or construction. CMR may rely upon the general accuracy of the "technical data" contained in such reports or drawings.

4.2.4. CMR is solely responsible for any interpretation or conclusion drawn from any "technical data" or any other data, interpretations, opinions, or information provided in the identified reports and drawings.

**5. Investigations/Site Examinations**

5.1. Before submitting a Proposal, each CMR is responsible for conducting or obtaining any additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the Site or otherwise, that may affect cost, progress, performance, or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by CMR and safety precautions and programs incident thereto or that CMR deems necessary to determine its Proposal for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of Contract Documents.

5.2. On request, County will provide each CMR access to the Site to conduct such examinations, investigations, explorations, tests, and studies, as each CMR deems necessary for submission of a Proposal. CMRs must fill all holes and clean up and restore the Site to its former condition upon completion of its explorations, investigations, tests, and studies. Such investigations and Site examinations may be performed during any and all Site visits indicated in the Notice to CMRs and only under

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the provisions of the Contract Documents, including, but not limited to, proof of insurance and obligation to indemnify against claims arising from such work.

END OF DOCUMENT

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DOCUMENT 00 43 36

**DESIGNATED SUBCONTRACTORS LIST**

PROJECT: **CHERRYLAND COMMUNITY CENTER**

1. CMR must list hereinafter the name and location of each subcontractor who will be employed, and the kind of Work that each will perform if the Contract is awarded to the CMR. CMR acknowledges and agrees that under Public Contract Code section 4100, et seq., it must clearly set forth below the name, location, and California contractor license number of each subcontractor who will perform work or labor or render service to the CMR in or about the construction of the Work in an amount in excess of one-half of one percent (1/2 of 1%) of CMR’s total Proposal, and that as to any Work that CMR fails to list, CMR agrees to perform that portion itself or be subjected to penalty under applicable law.
2. In case more than one subcontractor is named for the same kind of Work, state the portion that each will perform. CMR need not list entities that are only vendors or suppliers of materials.
3. If further space is required for the list of proposed subcontractors, additional sheets showing the required information, as indicated below, shall be attached hereto and made a part of this document.

**Subcontractor Name:** \_\_\_\_\_

Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_

CSLB No. \_\_\_\_\_ DIR Registration No. \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_

CSLB No. \_\_\_\_\_ DIR Registration No. \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_

CSLB No. \_\_\_\_\_ DIR Registration No. \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_

CSLB No. \_\_\_\_\_ DIR Registration No. \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

**Cherryland Community Center**

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Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_

CSLB No. \_\_\_\_\_ DIR Registration No. \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_

CSLB No. \_\_\_\_\_ DIR Registration No. \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_

CSLB No. \_\_\_\_\_ DIR Registration No. \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_

CSLB No. \_\_\_\_\_ DIR Registration No. \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_

CSLB No. \_\_\_\_\_ DIR Registration No. \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_

CSLB No. \_\_\_\_\_ DIR Registration No. \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_

CSLB No. \_\_\_\_\_ DIR Registration No. \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_

CSLB No. \_\_\_\_\_ DIR Registration No. \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

**Cherryland Community Center**

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Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_

CSLB No. \_\_\_\_\_ DIR Registration No. \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_

Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_

CSLB No. \_\_\_\_\_ DIR Registration No. \_\_\_\_\_

I certify and declare under penalty of perjury under the laws of the State of California that all the foregoing information is complete, true, and correct.

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

Proper Name of CMR: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

DOCUMENT 00 45 26

**WORKERS' COMPENSATION CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between County of Alameda  
(the "County" or the "Owner") and \_\_\_\_\_ (the  
"CMR") (the "Contract" or the "Project").

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

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

Proper Name of CMR: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

END OF DOCUMENT



DOCUMENT 00 45 46.01

**PREVAILING WAGE AND  
RELATED LABOR REQUIREMENTS CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between County of Alameda  
(the “County” or the “Owner”) and \_\_\_\_\_ (the  
“CMR”) (the “Contract” or the “Project”).

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours’ notice, payroll records, the registration and qualification requirements pursuant to Section 1725.5, and apprentice and trainee employment requirements, for all Work on the above Project.

I hereby acknowledge that County will use the Alameda County Contract Compliance System, including the Elation Systems, Inc. program, to monitor contract and labor compliance. CMR shall use the Compliance System to meet County’s requirements, and shall participate in training as directed by County in order to become and remain competent in the use of the Compliance System. Costs associated with the Alameda County Contract Compliance System, including the Elation Systems, Inc. program shall be borne by CMR and shall not increase the cost of the Contract.

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

Proper Name of CMR: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

END OF DOCUMENT

**Cherryland Community Center**

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DOCUMENT 00 45 46.04

**HAZARDOUS MATERIALS CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between County of Alameda (the “County” or the “Owner”) and \_\_\_\_\_ (the “CMR”) (the “Contract” or the “Project”).

1. CMR hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations (“New Hazardous Material”), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of CMR's work on the Project for County.
2. CMR further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.
3. Asbestos and/or asbestos-containing material shall be defined as all items containing detectable amounts of, but not limited to, chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite.
4. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the County’s determination. The costs of any such tests shall be paid by CMR if the material is found to be New Hazardous Material.
5. All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing “New Hazardous Material” will be immediately rejected and this Work will be removed at CMR's expense at no additional cost to the County.
6. CMR has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

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

Proper Name of CMR: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

END OF DOCUMENT

**Cherryland Community Center**

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DOCUMENT 00 45 46.06

**IMPORTED MATERIALS CERTIFICATION**

PROJECT/CONTRACT NO.: \_\_\_\_\_ between County of Alameda (the “County” or the “Owner”) and \_\_\_\_\_ (the “CMR”) (the “Contract” or the “Project”).

This form shall be executed by the CMR **AND** by all entities that, in any way, provide or deliver and/or supply any soils, aggregate, or related materials (“Fill”) to the Project Site. All Fill shall satisfy all requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, and section 21000 et seq. of the Public Resources Code (“CEQA”).

To the furthest extent permitted by California law, CMR shall defend, indemnify, and hold harmless the County, its agents, representatives, officers, consultants, employees, trustees, and volunteers pursuant to the indemnification provisions in the Contract Documents for, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

---

Certification of:     Delivery Firm/Transporter     Supplier     Manufacturer  
                           Wholesaler                                    Broker            Retailer  
                           Distributor                                    Other \_\_\_\_\_

Type of Entity     Corporation                                    General Partnership  
                           Limited Partnership                            Limited Liability Company  
                           Sole Proprietorship                            Other \_\_\_\_\_

Name of firm ("Firm"): \_\_\_\_\_

Mailing address: \_\_\_\_\_

Addresses of branch office used for this Project: \_\_\_\_\_

If subsidiary, name and address of parent company: \_\_\_\_\_

---

By my signature below, I hereby certify that I am aware of section 25260 of the Health and Safety Code and the sections referenced therein regarding the definition of hazardous material. I further certify on behalf of the Firm that all soils, aggregates, or related materials provided, delivered, and/or supplied or that will be provided, delivered, and/or supplied by this Firm to the Project Site are free of any and all hazardous material as defined in section

**Cherryland Community Center**

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25260 of the Health and Safety Code. I further certify that I am authorized to make this certification on behalf of the Firm.

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

Proper Name of Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

END OF DOCUMENT

**Cherryland Community Center**

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DOCUMENT 00 55 00

**NOTICE TO PROCEED**

Dated: \_\_\_\_\_, 20\_\_

TO: \_\_\_\_\_ (“CMR”)

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PROJECT: Cherryland Community Center

PROJECT/CONTRACT NO.: \_\_\_\_\_ between County of Alameda and CMR (“Contract”).

You are notified that the Contract Time under the above Contract will commence to run on \_\_\_\_\_, 20\_\_. By that date, you are to start performing your obligations under the Contract Documents. In accordance with the Contract executed by CMR, the date of completion is \_\_\_\_\_, 20\_\_. **[ENSURE THIS PARAGRAPH IS CONSISTENT WITH THE DATE/DAYS INDICATED IN THE CONTRACT DOCUMENTS]**

You must submit the following documents by 5:00 p.m. of the **TENTH (10<sup>TH</sup>)** business day following the date of this Notice to Proceed:

- a. CMR’s preliminary schedule of construction.
- b. CMR’s preliminary schedule of values for all of the Work.
- c. CMR’s preliminary schedule of submittals, including Shop Drawings, Product Data, and Samples submittals
- d. CMR’s Safety Plan specifically adapted for the Project.

**Cherryland Community Center**

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- e. A complete subcontractors list, including the name, address, telephone number, facsimile number, California State Contractors License number, classification, and monetary value of all Subcontracts.

Thank you. We look forward to a very successful Project.

COUNTY OF ALAMEDA

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

END OF DOCUMENT

DOCUMENT 00 57 00

**ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION**  
**(Public Contract Code § 22300)**

This Escrow Agreement (“Escrow Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the County of Alameda (“County”), whose address is \_\_\_\_\_, California, and \_\_\_\_\_ (“Construction Manager at Risk” or “CMR”), whose address is \_\_\_\_\_, and \_\_\_\_\_ (“Escrow Agent”), a state or federally chartered bank in California, whose address is \_\_\_\_\_.

For the consideration hereinafter set forth, County, CMR, and Escrow Agent agree as follows:

1. Pursuant to section 22300 of Public Contract Code of the State of California, which is hereby incorporated by reference, CMR has the following two (2) options:
  - Deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by County pursuant to the Construction Contract No. \_\_\_\_\_ entered into between County and CMR for the Cherryland Community Center Project, in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) dated, \_\_\_\_\_, 20\_\_\_\_, (the “Contract”); **or**
  - On written request of CMR, County shall make payments of the retention earnings for the Contract directly to Escrow Agent.

When CMR deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify County within ten (10) calendar days of the deposit. The market value of the securities at all times from substitution until the termination of the Escrow Agreement shall be at least equal to the cash amount then required to be withheld as retention pursuant to the Contract.

Securities shall be held in name of County of Alameda, and shall designate CMR as beneficial owner.

2. County shall make progress payments to CMR for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in the form and amount specified above.
3. When County makes payment of retention earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of CMR until the time that the escrow created under this Escrow Agreement is terminated. CMR may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the Parties shall be equally applicable and binding when County pays Escrow Agent directly.

**Cherryland Community Center**

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4. CMR shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of County. The County will charge CMR \$\_\_\_\_\_ for each of County’s deposits to the escrow account. These expenses and payment terms shall be determined by County, CMR, and Escrow Agent.
5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of CMR and shall be subject to withdrawal by CMR at any time and from time to time without notice to County.
6. CMR shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from County to Escrow Agent that County consents to withdrawal of amount sought to be withdrawn by CMR.
7. County shall have the right to draw upon the securities and/or withdraw amounts from the Escrow Account in event of default by CMR. Upon seven (7) days written notice to Escrow Agent from County of the default, if applicable, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by County.
8. Upon receipt of written notification from County certifying that the Contract is final and complete, and that CMR has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to CMR all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on written notifications from County and CMR pursuant to Paragraphs 5 through 8, inclusive, of this Escrow Agreement and County and CMR shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth above.
10. **Notice.** Names of persons who are authorized to give written notice or to receive written notice on behalf of County and on behalf of CMR in connection with the foregoing, and exemplars of their respective signatures are as follows:

**On behalf of County:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

**On behalf of CMR:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address



**Cherryland Community Center**

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**On behalf of Escrow Agent:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

At the time the Escrow Account is opened, County and CMR shall deliver to Escrow Agent a fully executed copy of this Escrow Agreement.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement by their proper officers on the date first set forth above.

**On behalf of County:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

**On behalf of CMR:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

**On behalf of Escrow Agent:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

END OF DOCUMENT

DOCUMENT 00 61 13.13

**PERFORMANCE BOND FORM**  
**(100% of GMP)**

**(Note: CMRs must use this form, NOT a surety company form.)**

**WHEREAS**, the Board of Supervisors of the County of Alameda (“County”) and \_\_\_\_\_ (“Principal”) have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

\_\_\_\_\_ Cherryland Community Center \_\_\_\_\_ (Project Name)  
 (“Project” or “Contract”)

which Contract dated \_\_\_\_\_, 20\_\_\_, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

**WHEREAS**, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract;

**NOW, THEREFORE**, the Principal and \_\_\_\_\_ (“Surety”) are held and firmly bound unto the Board of the County in the penal sum of:

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Perform all the work required to complete the Project; and
- Pay to the County all damages the County incurs as a result of the Principal’s failure to perform all the Work required to complete the Project.

**Cherryland Community Center**

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The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the County, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Principal shall fail to make full, complete, and satisfactory repair, replace, and totally protect the County from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Principal remains. Nothing herein shall limit the County's rights or the Principal's or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

**Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Principal's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:**

\_\_\_\_\_

\_\_\_\_\_

**Attention:** \_\_\_\_\_

**Cherryland Community Center**

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**Telephone No.:** (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

**Fax No.:** (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

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

**Cherryland Community Center**

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IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Principal**

**Surety**

\_\_\_\_\_

\_\_\_\_\_

(Name of Principal)

(Name of Surety)

\_\_\_\_\_

\_\_\_\_\_

(Signature of Person with Authority)

(Signature of Person with Authority)

\_\_\_\_\_

\_\_\_\_\_

(Print Name)

(Print Name)

(Affix Corporate Seal)

\_\_\_\_\_

(Name of California Agent of Surety)

\_\_\_\_\_

(Address of California Agent of Surety)

\_\_\_\_\_

(Telephone Number of California Agent of Surety)

**Cherryland Community Center**

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**Principal must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

END OF DOCUMENT

**Cherryland Community Center**

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DOCUMENT 00 61 13.16

**PAYMENT BOND FORM**  
**CMR's Labor & Material Payment Bond**  
**(100% of Guaranteed Maximum Price)**

**(Note: CMRs must use this form, NOT a surety company form.)**

**KNOW ALL PERSONS BY THESE PRESENTS:**

**WHEREAS**, the Board of Supervisors of the County of Alameda (“County”) and \_\_\_\_\_  
\_\_\_\_\_, (“Principal”) have entered into a contract for the furnishing of all materials  
and labor, services and transportation, necessary, convenient, and proper to

\_\_\_\_\_ Cherryland Community Center \_\_\_\_\_ (Project Name)  
 (“Project” or “Contract”)

which Contract dated \_\_\_\_\_, 20\_\_\_, and all of the Contract Documents attached to  
or forming a part of the Contract, are hereby referred to and made a part hereof, and

**WHEREAS**, pursuant to law and the Contract, the Principal is required, before entering upon the  
performance of the work, to file a good and sufficient bond with the body by which the Contract is  
awarded in an amount equal to 100 percent (100%) of the Guaranteed Maximum Price, to secure the  
claims to which reference is made in division 4, part 6 of the Civil Code of California, and division 2,  
part 7, of the Labor Code of California.

**NOW, THEREFORE**, the Principal and \_\_\_\_\_, (“Surety”) are  
held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in  
the penal sum of:

\_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_), lawful money of the United States, being a sum not less than the  
total amount payable by the terms of Contract, for the payment of which sum well and truly to be  
made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and  
severally, by these presents.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs,  
executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any  
labor, materials, provisions, provender, or other supplies, used in, upon, for or about the performance  
of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due  
under the Unemployment Insurance Act with respect to such work or labor, that the Surety will pay  
the same in an amount not exceeding the amount herein above set forth, and also in case suit is  
brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court,  
and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all  
persons, companies, and corporations entitled to file claims under sections 9000 through 9566 of the  
Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

**Cherryland Community Center**

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Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Principal**

**Surety**

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Affix Corporate Seal)

\_\_\_\_\_  
(Name of California Agent of Surety)

\_\_\_\_\_  
(Address of California Agent of Surety)

\_\_\_\_\_  
(Telephone Number of California Agent of Surety)

**Principal must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

END OF DOCUMENT



**Cherryland Community Center**

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DOCUMENT 00 65 36

**WARRANTY FORM**

\_\_\_\_\_ ("CMR") hereby agrees that the \_\_\_\_\_  
\_\_\_\_\_ ("Work" of CMR) which CMR has installed for County of Alameda  
("County") for the following project:

PROJECT: \_\_\_\_\_ **Cherryland Community Center** \_\_\_\_\_ (Project Name)

("Project" or "Contract")

has been performed in accordance with the requirements of the Contract Documents and that the Work as installed will fulfill the requirements of the Contract Documents.

The undersigned agrees to repair or replace any or all of such Work that may prove to be defective in workmanship or material together with any other adjacent Work that may be displaced in connection with such replacement within a period of **TWO (2) year(s)** from the date of completion as defined in Public Contract Code section 7107, subdivision (c), ordinary wear and tear and unusual abuse or neglect excepted. The date of completion is \_\_\_\_\_, 20\_\_.

In the event of the undersigned's failure to comply with the above-mentioned conditions within a reasonable period of time, as determined by County, but not later than seven (7) days after being notified in writing by County, the undersigned authorizes the County to proceed to have said defects repaired and made good at the expense of the undersigned. The undersigned shall pay the costs and charges therefor upon demand.

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

Proper Name of CMR: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Representatives to be contacted for service subject to terms of Contract:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_

END OF DOCUMENT

**Cherryland Community Center**

SECTION 00 72 13

**GENERAL CONDITIONS  
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## GENERAL CONDITIONS

### 1. CONTRACT TERMS AND DEFINITIONS

#### 1.1 Definitions

Wherever used in the Contract Documents, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof:

- 1.1.1** Adverse Weather: Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred, (2) unanticipated, and (3) at the Project.
- 1.1.2** Allowance(s): Amount(s) indicated in the Agreement as part of the GMP for specific scopes of work for which the CMR may bill its time, materials, and other items in the identical structure as a Change Order.
- 1.1.3** Approval, Approved, and/or Accepted: Refer to written authorization, unless stated otherwise.
- 1.1.4** Architect: The individual, partnership, corporation, joint venture, or any combination thereof, named as Architect, who will have the rights and authority assigned to the Architect in the Contract Documents. The term Architect means the County's Architect on this Project or the Architect's authorized representative.
- 1.1.5** Architect's Supplemental Instruction: A document prepared by the Architect to provide supplemental instructions or interpretations or to order minor changes in the work not involving adjustment in the Contract Amount or Contract Time.
- 1.1.6** CMR: A contractor who intends to provide a bid to the County to perform the Work of this Contract.
- 1.1.7** Change Order: A written order to the CMR authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the GMP or Contract Time, and does not include Work that could be or should be paid out of Project Contingency. All Change Orders shall identify all of the following:
  - 1.1.7.1** A change in the Work due to:
    - 1.1.7.1.1 Additional scope of Work;
    - 1.1.7.1.2 Changes mandated by agencies having authority over the Project;

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- 1.1.7.1.3 Unforeseen Site Conditions;
- 1.1.7.2 A change in the GMP;
- 1.1.7.3 The extent of the adjustment in the Contract Time; and/or
- 1.1.7.4 An adjustment to the Contract terms.
- 1.1.8 **CMR's Fee:** The CMR's Fee shall be a set amount (lump sum amount) that will include all of CMR's anticipated profit and all of CMR's home, office and other overhead.
- 1.1.9 **CMR's General Conditions:** The cost of the CMR's support activities that must be in place to support the construction aspects of the Project, including, without limitation, the categories and items set forth in the CMR's General Conditions Table.
- 1.1.10 **Completion:** When the entire Work shall have been completed to the satisfaction of County, including all punch list items.
- 1.1.11 **Construction Change Directive:** A written order prepared and issued by the County, the Construction Manager, and/or the Architect and signed by the County and the Architect, directing a change in the Work.
- 1.1.12 **Construction Manager:** The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the County. If no Construction Manager is used on the Project that is the subject of this Contract, then all references to Construction Manager herein shall be read to refer to County.
- 1.1.13 **Construction Manager (CM) at Risk, "CMR," "Construction Manager at Risk" or "CM-at-Risk" or "Contractor":** The individual, partnership, corporation, association, joint venture, or any combination thereof, that has entered into the Agreement with the County to perform the Work, identified as such in the Agreement, and referred to throughout the Contract as if singular in number.
- 1.1.14 **Construction Schedule:** The progress schedule of construction of the Project as provided by CMR and approved by County.
- 1.1.15 **Contract or Contract Documents:** The Contract consists exclusively of the documents evidencing the agreement of the County and CMR, identified as the Contract Documents in the Contract for Preconstruction and Construction Services (which may also be referred to in the Contract Documents as "Contract" or "Agreement").
- 1.1.16 **Contract Time:** The time period stated in the Agreement for the Completion of the Work.



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- 1.1.17** County: County of Alameda, acting through its Board of Supervisors or any of its authorized agents. The County may, at any time:
- 1.1.17.1** Direct the CMR to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate the CMR will communicate with or provide notice to the County; and/or
  - 1.1.17.2** Direct the Construction Manager or the Architect to communicate with or direct the CMR on matters for which the Contract Documents indicate the County will communicate with or direct the CMR.
- 1.1.18** County Contingency: The amount set forth in the Agreement, which is not part of the GMP, that the County may use, in its sole discretion, to pay Change Orders, Construction Change Directives, and Force Account Directives as set forth in the Agreement.
- 1.1.19** Daily Job Report(s): Daily Project reports prepared by the CMR's employee(s) who are present on Site, which shall include the information required herein.
- 1.1.20** Day(s): Unless otherwise designated, day(s) means calendar day(s).
- 1.1.21** Direct Cost of the Work: The total cost of the actual construction of the Project. The Direct Cost of the Work is a component of the GMP and includes only the following:
- 1.1.21.1** Sum of all CMR's costs, fees and charges to self-perform Work, excluding CMR's Fee and CMR's General Conditions.
  - 1.1.21.2** Sum of all Subcontractor costs, fees and charges, including Subcontractor insurance and bond costs incurred during the Project, but not any component of Work that is part of the CMR's General Conditions.
- 1.1.22** Drawings (or "Plans"): The graphic and pictorial portions of the Contract Documents showing the design, location, scope and dimensions of the work, generally including plans, elevations, sections, details, schedules, sequence of operation, and diagrams.
- 1.1.23** Force Account Directive: A process that may be used when the County and the CMR cannot agree on a price for a specific portion of work or before the CMR prepares a prices for a specific portion of work and whereby the CMR performs the work as indicated herein on a time and materials basis.

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- 1.1.24** Guaranteed Maximum Price or “GMP”: The amount set forth in the Agreement that is the maximum price that the County will pay CMR as payment for all Work of the Project. The GMP includes only the sum of the following:
  - 1.1.24.1** Direct Cost of the Work;
  - 1.1.24.2** CMR’s Fee;
  - 1.1.24.3** CMR’s General Conditions in its performance of the Work (e.g., labor costs, equipment costs, materials costs, insurance costs, bond costs, etc.);
  - 1.1.24.4** Project Contingency; and
  - 1.1.24.5** Allowance(s) (if any).
- 1.1.25** Premises: The real property owned by the County on which the Site is located.
- 1.1.26** Product(s): New material, machinery, components, equipment, fixtures and systems forming the Work, including existing materials or components required and approved by the County for reuse.
- 1.1.27** Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the CMR to illustrate a material, product, or system for some portion of the Work.
- 1.1.28** Project: The planned undertaking as provided for in the Contract Documents.
- 1.1.29** Project Contingency. The amount set forth in the Agreement that may be utilized to pay for changes or extra work due only to conflicts, ambiguities or errors or omissions in the Contract Documents, if they could have been reasonably discovered by the CMR during CMR’s pre-construction phase services or in the subcontractor bid packages, not including Unforeseen Site Conditions. The unused portion of the Project Contingency shall be retained by the County at the end of the Project.
- 1.1.30** Program Manager: The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the County. If no Program Manager is designated for Project that is the subject of this Contract, then all references to Project Manager herein shall be read to refer to County.
- 1.1.31** Proposed Change Order or “PCO”: A written request prepared by the CMR requesting that the County and the Architect issue a Change Order

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based upon a proposed change to the Work.

- 1.1.32** Provide: Shall include “provide complete in place,” that is, “furnish and install,” and “provide complete and functioning as intended in place” unless specifically stated otherwise.
- 1.1.33** Request for Information or “RFI”: A written request prepared by the CMR requesting that the Architect provide additional information necessary to clarify or amplify an item in the Contract Documents that the CMR believes is not clearly shown or called for in the Drawings or Specifications or other portions of the Contract Documents, or to address problems that have arisen under field conditions.
- 1.1.34** Request for Substitution: A request by CMR to substitute an equal or superior material, product, thing, or service for a specific material, product, thing, or service that has been designated in the Contract Documents by a specific brand or trade name.
- 1.1.35** Safety Orders: Written and/or verbal orders for construction issued by the California Division of Industrial Safety (“CalOSHA”) or by the United States Occupational Safety and Health Administration (“OSHA”).
- 1.1.36** Safety Plan: CMR’s safety plan specifically adapted for the Project. CMR's Safety Plan shall comply with all provisions regarding Project safety, including all applicable provisions in these General Conditions.
- 1.1.37** Samples: Physical examples that illustrate materials, products, equipment, finishes, colors, or workmanship and that, when approved in accordance with the Contract Documents, establish standards by which portions of the Work will be judged.
- 1.1.38** Shop Drawings: All drawings, prints, diagrams, illustrations, brochures, schedules, and other data that are prepared by the CMR, a subcontractor, manufacturer, supplier, or distributor, that illustrate how specific portions of the Work shall be fabricated or installed.
- 1.1.39** Site: The Project site as shown on the Drawings.
- 1.1.40** Specifications: That portion of the Contract Documents, Division 01 through Division 49, and all technical sections, and addenda to all of these, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.
- 1.1.41** Subcontractor: A contractor and/or supplier who is under contract with the CMR or with any other subcontractor, regardless of tier, to perform a portion of the Work of the Project.

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**1.1.42** Submittal Schedule: The schedule of submittals as provided by CMR and approved by County.

**1.1.43** Surety: The person, firm, or corporation that executes as surety the CMR’s Performance Bond and Payment Bond, and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.

**1.1.44** SWPPP: The County’s Storm Water Pollution Prevention Plan.

**1.1.45** Unforeseen Site Conditions: Conditions actually encountered on the Project Site that were reasonably unforeseeable based on all the information available to the CMR prior to finalizing the GMP, that are one or more of the following:

**1.1.45.1** Subsurface or latent physical conditions at the Site differing materially from those indicated; or

**1.1.45.2** Unknown physical conditions at the Site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Contract; or

**1.1.45.3** Unknown hazardous materials on the Site.

**1.1.46** Work: All labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for the construction and Completion of the Project.

**1.2 Laws Concerning The Contract**

Contract is subject to all provisions of the Constitution and laws of California and the United States, governing, controlling, or affecting County, or the property, funds, operations, or powers of County, and such provisions are by this reference made a part hereof. Any provision required by law to be included in this Contract shall be deemed to be inserted.

**1.3 No Oral Agreements**

No oral agreement or conversation with any officer, agent, or employee of County, either before or after execution of Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract.

**1.4 No Assignment**

CMR shall not assign this Contract or any part thereof including, without limitation, any services or money to become due hereunder without the prior written consent of

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the County. Assignment without County’s prior written consent shall be null and void. Any assignment of money due or to be come due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of work called for under this Contract in favor of all persons, firms, or corporations rendering services or supplying material to the extent that claims are filed pursuant to the Civil Code, Code of Civil Procedure, Government Code, Labor Code, and/or Public Contract Code, and shall also be subject to deductions for liquidated damages or withholding of payments as determined by County in accordance with this Contract. CMR shall not assign or transfer in any manner to a Subcontractor or supplier the right to prosecute or maintain an action against the County.

**1.5 Notice And Service Thereof**

**1.5.1** Any notice from one party to the other or otherwise under Contract shall be in writing and shall be dated and signed by the party giving notice or by a duly authorized representative of that party. Any notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

**1.5.1.1** If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

**1.5.1.2** If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

**1.5.1.3** If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it shall be considered delivered three (3) days after date deposited, as indicated by the postmarked date.

**1.5.1.4** If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for.

**1.6 No Waiver**

The failure of County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by the County, Architect, or Construction Manager shall constitute a waiver of any right or duty afforded the County under the Contract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

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**1.7 Substitutions For Specified Items**

See Special Conditions.

**1.8 Materials and Work**

- 1.8.1** Except as otherwise specifically stated in this Contract, CMR shall provide and pay for all materials, labor, tools, equipment, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to execute and complete this Contract within the Contract Time.
- 1.8.2** Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted or specified, and workmanship shall be of good quality.
- 1.8.3** Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of Work and shall be stored properly and protected as required.
- 1.8.4** For all materials and equipment specified or indicated in the Drawings, the CMR shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended. Incidental items not indicated on Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described, or be necessary in good practice to provide a complete assembly or system, shall be furnished as though itemized here in every detail. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.
- 1.8.5** CMR shall, after award of Contract by County and after relevant submittals have been approved, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. CMR shall, upon demand from County, present documentary evidence showing that orders have been placed.
- 1.8.6** County reserves the right but has no obligation, for any neglect in complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order that the Work may be completed at the date specified in the Agreement, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by CMR or withheld from payment(s) to CMR.
- 1.8.7** CMR warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon Completion of all Work to deliver the Site to County, together with all improvements and

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appurtenances constructed or placed thereon by it, and free from any claims, liens, or charges. CMR further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract shall have any right to lien any portion of the Premises or any improvement or appurtenance thereon, except that CMR may install metering devices or other equipment of utility companies or of political subdivision, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, CMR shall advise County as to owner thereof.

**1.8.8** Nothing contained in this Article, however, shall defeat or impair the rights of persons furnishing materials or labor under any bond given by CMR for their protection or any rights under any law permitting such protection or any rights under any law permitting such persons to look to funds due CMR in hands of County (e.g., Stop Payment Notices), and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

**1.8.9** Title to new materials and/or equipment for the Work of this Contract and attendant liability for its protection and safety shall remain with CMR until incorporated in the Work of this Contract and accepted by County. No part of any materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of this Contract. CMR shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to County or its authorized representative and shall, at the County's request, forward it to the County.

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**2. COUNTY**

**2.1 Occupancy**

County reserves the right to occupy portions of the Project at any time before Completion. Neither the County's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by County shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the CMR or the CMR's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein

**2.2 County's Rights if CMR Fails to Perform.**

If the CMR is behind schedule, is failing to construct the Project pursuant to the Contract Documents or is otherwise failing to perform any provisions of this Contract, the County, after **FORTY-EIGHT (48)** hours written notice to the CMR, may take any action necessary or beneficial to the County to complete the Project, take over the Work of the Contract, terminate or suspend the Contract as indicated herein, or any combination or portion of those actions. The CMR and the Surety shall be liable to the County for any cost incurred by the County in those actions and the County has the right to deduct the cost thereof from any payment then or thereafter due the CMR.

**3. ARCHITECT**

**3.1 Role and Authority**

The Architect shall represent County during the Project and will observe the progress and quality of the Work on behalf of County. Architect shall have the authority to act on behalf of County to the extent expressly provided in the Contract Documents and to the extent determined by County to, among other things, observe the progress and quality of the Work on behalf of the County. Architect shall have authority to reject materials, workmanship, and/or the Work whenever rejection may be necessary, in Architect's reasonable opinion, to insure the proper execution of the Contract.

**3.2 Interpretations**

Architect shall, with County and on behalf of County, determine the amount, quality, acceptability, and fitness of all parts of the Work, and interpret the Specifications, Drawings, and shall, with County, interpret all other Contract Documents.

**3.3 Laws**

Architect shall have all authority and responsibility established by law, including Title 24 of the California Code of Regulations.



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**3.4 Communications**

CMR shall provide County and the Construction Manager with a copy of all written communication between CMR and Architect at the same time as that communication is made to Architect, including, without limitation, all RFIs, correspondence, submittals, claims, and proposed change orders.

**4. CONSTRUCTION MANAGER**

**4.1 Role and Authority**

If a Construction Manager is used on this Project, the Construction Manager will provide administration of the Contract on the County's behalf. After execution of the Contract and Notice to Proceed, all correspondence and/or instructions from CMR and/or County shall be forwarded through the Construction Manager. The Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures or for safety precautions in connection with the Work, which shall all remain the CMR's responsibility.

**4.2 Authority to Reject**

The Construction Manager, however, will have authority to reject materials and/or workmanship not conforming to the Contract Documents, as determined by the County and/or the Architect. The Construction Manager shall also have the authority to require special inspection or testing of any portion of the Work, whether it has been fabricated, installed, or fully completed. Any decision made by the Construction Manager, in good faith, shall not give rise to any duty or responsibility of the Construction Manager to the CMR, any Subcontractor, their agents, employees, or other persons performing any of the Work. The Construction Manager shall have free access to any or all parts of Work at any time.

**4.3 If No Construction Manager**

If the County does not use a Construction Manager on this Project all references to Construction Manager or CM shall be read as County.

**5. INSPECTIONS AND TESTS**

**5.1 Tests and Inspections**

**5.1.1** The County will select an independent testing laboratory to conduct tests. Selection of the materials required to be tested shall be by the laboratory or the County's representative and not by the CMR. The CMR shall notify the County's representative a sufficient time in advance of its readiness for required observation or inspection.

**5.1.2** The CMR shall notify the County's representative a sufficient time in

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advance of the manufacture of material to be supplied under the Contract Documents, that must by terms of the Contract Documents be tested, in order that the County may arrange for the testing of same at the source of supply. This notice shall be, at a minimum, seventy-two (72) hours prior to the manufacture of the material that needs to be tested.

**5.1.3** Any material shipped by the CMR from the source of supply prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated into and/or onto the Project.

**5.1.4** The County will select and pay testing laboratory costs for all tests and inspections. Costs of tests of any materials found to be not in compliance with the Contract Documents shall be paid for by the County and reimbursed by the CMR or deducted from the GMP.

**5.2 Costs for After Hours and/or Off Site Inspections**

If the CMR performs Work outside the County’s regular working hours or requests the County to perform inspections off Site, costs of any inspections required outside regular working hours or off Site shall be borne by the CMR and may be invoiced to the CMR by the County or the County may deduct those expenses from the next Progress Payment.

**6. CMR**

CMR shall construct the Work for the GMP including any adjustment(s) to the GMP pursuant to provisions herein regarding changes to the GMP. Except as otherwise noted, CMR shall provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities, transportation, taxes, and services necessary for the proper execution and Completion of the Work, except as indicated herein.

**6.1 Status of CMR**

**6.1.1** CMR is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which it and its Subcontractors perform the services required of it by the Contract Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the County, or any of the County's employees or agents, and CMR or any of CMR’s Subcontractors, agents or employees. CMR assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. CMR, its agents, its employees and its Subcontractors shall not be entitled to any rights or privileges of County employees. County shall be permitted to monitor the CMR’s activities to determine compliance with the terms of this Contract.

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**6.1.2** As required by law, CMR and all Subcontractors shall be properly licensed and regulated by the Contractor’s State License Board, located at 9821 Business Park Drive , Sacramento, California 95827, with a mailing address of Post Office Box 26000, Sacramento, California, and with a website at <http://www.cslb.ca.gov>.

**6.2 CMR’s Supervision**

**6.2.1** At all times during progress of the Work, CMR shall keep on the Premises, and at all other locations where any Work related to the Contract is being performed, a competent project manager and construction superintendent who are employees of the CMR, to whom the County does not object and at least one of whom shall be fluent in reading, writing and speaking English.

**6.2.2** The project manager and construction superintendent shall both speak fluently the predominant language of the CMR’s employees. All workers shall be sufficiently competent in English to respond to inquiries and instructions and give directions concerning matters of safety and concerning the identification and location of site foremen, the CMR’s construction superintendent and the CMR’s project manager.

**6.2.3** Before commencing the Work herein, CMR shall give written notice to County of the name and relevant credentials of its project manager and construction superintendent. Neither the CMR’s project manager nor construction superintendent shall be changed except with prior written notice to County and County’s approval, unless the CMR’s project manager and/or construction superintendent proves to be unsatisfactory to CMR, County, any of the County’s employees, agents, the Construction Manager, or the Architect, in which case, CMR shall notify County in writing. The CMR’s project manager and construction superintendent shall each represent CMR, and all directions given to CMR’s project manager and/or construction superintendent shall be as binding as if given to CMR.

**6.2.4** CMR shall give efficient supervision to Work, using its best skill and attention. CMR shall carefully study and compare all Contract Documents, Drawings, Specifications, and other instructions and shall at once report to County, Construction Manager, and Architect any error, inconsistency, or omission that CMR or its employees and Subcontractors may discover, in writing. The CMR shall have responsibility for discovery of errors, inconsistencies, or omissions.

**6.2.5** The CMR’s project manager shall devote sufficient time to the Project on the Premises, and in the CMR’s home office to pre-plan activities to meet the Project schedule and fulfill all Contract obligations. This includes, but is not limited to, making timely submittals, issuing and disseminating

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necessary RFI's, promptly processing and distributing bulletins, change orders and payments, keeping required logs current. If any of these activities fall behind Contract requirements or dates necessary to Complete the Project pursuant to the Construction Schedule, the CMR must provide a full time project manager on site dedicated solely to the Project, until the deficiencies are corrected.

- 6.2.6** The CMR shall verify all indicated dimensions before ordering materials or equipment, or before performing work. The CMR shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to the CMR with the Project Documents before commencing Work. Errors, inconsistencies or omissions discovered shall be immediately reported to the County. Upon commencement of any item of Work, the CMR shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make work properly fit at no additional cost to County. This responsibility for verification of dimensions is a non-delegable duty and may not be delegated to Subcontractors or CMR's agents.
- 6.2.7** Omissions from the plans, drawings or specifications, or the misdescription of details of Work which are manifestly necessary to carry out the intent of the plans, drawings and specifications, or which are customarily performed, shall not relieve the CMR from performing such omitted or misdescribed work, but they shall be performed as if fully and correctly set forth and described in the plans, drawings and specifications.
- 6.2.8** The CMR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The CMR shall be responsible to ensure that the completed Work complies accurately with the Contract Documents.

**6.3 Duty to Provide Fit Workers**

- 6.3.1** CMR and Subcontractor(s) shall at all times enforce strict discipline and good order among their employees and shall not employ or work any unfit person or anyone not skilled in work assigned to that person. It shall be the responsibility of CMR to ensure compliance with this requirement. County may require CMR to permanently remove unfit persons from Site.
- 6.3.2** Any person in the employ of CMR or Subcontractor(s) whom County may deem incompetent or unfit shall be excluded from working on the Project and shall not again be employed on the Project except with the prior written consent of County.
- 6.3.3** The CMR shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work.

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**6.3.4** If CMR intends to make any change in the name or legal nature of the CMR’s entity, CMR must first notify the County. The County shall determine if CMR’s intended change is permissible while performing this Contract.

**6.3.5** Compliance with Immigration Reform and Control Act of 1986. As required by law, CMR and all Subcontractors shall employ individuals for the Work in conformity with the Immigration Reform and Control Act of 1986, 8 USC §§1101 et seq.

**6.4 Personnel.**

If CMR or any Subcontractor on the Site fails to comply with any of the following provisions, the County may have the offending person(s) immediately removed from the Site, and such person(s) shall be replaced within three (3) days, at no additional expense to the County. CMR, on behalf of it and its subcontractors, hereby waives any claim that the provisions of this paragraph or the enforcement thereof interferes, or has the potential to interfere, with its right to control the means and methods of its performance and duties under this Contract.

**6.4.1** All persons working for CMR and Subcontractor(s) shall refrain from using profane or vulgar language, or any other language that is inappropriate on the Site.

**6.4.2** CMR shall employ a full-time superintendent and necessary assistants who shall have complete authority to represent and act on behalf of the CMR on all matters pertaining to the Work. The superintendent shall be competent and have a minimum of five (5) years experience in construction supervision on projects of similar scale and complexity. The superintendent shall be satisfactory to the County and, if not satisfactory, shall be replaced by the CMR with one that is acceptable. The superintendent shall not be changed without the written consent of the County unless the superintendent ceases to be employed by the CMR.

**6.4.3** CMR shall employ a competent estimator and necessary assistants, or contract for sufficient services of an estimating consultant and to process proposed change orders (PCO). The estimator shall have a minimum of five (5) years experience in estimating. The estimator shall be satisfactory to the County and, if not satisfactory, shall be replaced by the CMR with one that is acceptable. The estimator shall not be changed without the written consent of the County unless the estimator ceases to be employed by the CMR.

**6.4.4** CMR shall employ a competent scheduler and necessary assistants, or contract for sufficient services of a scheduling consultant. The scheduler shall have a minimum of five (5) years experience in scheduling. The scheduler shall be satisfactory to the County and, if not satisfactory, shall

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be replaced by the CMR with one that is acceptable. The scheduler shall not be changed without the written consent of the County unless the scheduler ceases to be employed by the CMR.

- 6.4.5** CMR shall at all times enforce strict discipline and good order among CMR's employees, and shall not employ on the Project any unfit person or anyone not skilled in the Work assigned.

### **6.5 Purchase of Materials and Equipment**

The CMR is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from County to assure that there are no delays.

### **6.6 Documents On Project Site**

- 6.6.1** CMR shall at all times keep on the Project Site, or such other location as County may authorize in writing one legible copy of all Contract Documents, including Addenda and Change Orders, and titles 19 and 24 of the California Code of Regulations, the specified edition(s) of the Uniform Building Code, all approved Drawings, Plans, Schedules, and Specifications, all codes and documents referred to in the Specifications and made part thereof, and all Alameda County General Ordinance Code provisions related to the Project including Chapter 6.04 (“Fire Code”) and Title 15 (“Building and Construction”). These documents shall be kept in good order and available to County, Construction Manager, Architect, Architect’s representatives, and all authorities having jurisdiction. CMR shall be familiar with and comply with the provisions of these titles as they relate to this Project. CMR shall also be familiar with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly titles 8 and 17. CMR shall coordinate with Architect and Construction Manager and shall submit its verified report(s) according to the requirements of title 24.

- 6.6.2** Daily Job Reports. CMR shall maintain, at a minimum, at least one (1) set of Daily Job Reports on the Project. These must be prepared by the CMR's employee(s) who are present on Site, and must include, at a minimum, the following information:

**6.6.2.1** A brief description of all Work performed on that day. This shall include a listing of what was done, which contractors were on site that day, and where on the site the work was performed.

**6.6.2.2** A summary of all other pertinent events and/or occurrences on that day.

**6.6.2.3** The weather conditions on that day.

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- 6.6.2.4** A list of all Subcontractor(s) working on that day,
- 6.6.2.5** A list of each CMR employee working on that day and the total hours worked for each employee.
- 6.6.2.6** A complete list of all equipment on Site that day, whether in use or not.
- 6.6.2.7** All complete list of all materials, supplies, and equipment delivered on that day.
- 6.6.2.8** A complete list of all inspections and tests performed on that day.
- 6.6.2.9** Each day CMR shall provide a copy of the previous day’s Daily Job Report to the County or the County’s Construction Manager.

**6.7 Preservation of Records**

The County shall have the right to examine and audit all Daily Job Reports or other Project records of CMR’s project manager(s), project superintendent(s), and/or project foreperson(s), all certified payroll records and/or related documents including, without limitation, payroll, payment, timekeeping and tracking documents; all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports, and other data of the CMR, any Subcontractor, and/or supplier, including computations and projections related to bidding, negotiating, pricing, or performing the Work or Contract modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination, supervision, or pricing data at no additional cost to the County. These documents may be duplicative and/or be in addition to any Bid Documents held in escrow by the County. The CMR shall make available at its office at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under this Contract. Notwithstanding the provisions above, CMR shall provide any records requested by any governmental agency, if available, after the time set forth above.

**6.8 Integration of Work**

- 6.8.1** CMR shall do all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, to fit it to receive or be received by work of other contractors, and to coordinate tolerances to various pieces of work, showing upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and shall conform them as County and/or Architect may direct.
- 6.8.2** All cost caused by defective or ill-timed Work shall be the sole responsibility of CMR, inclusive of repair work.
- 6.8.3** CMR shall not endanger any work performed by it or anyone else by

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cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor except with consent of County.

**6.9 Obtaining of Permits and Licenses**

CMR shall secure and pay for all permits, licenses, and certificates necessary for performance of the Work before the date of the commencement of the Work or before the permits, licenses, and certificates are legally required to continue the Work without interruption. The CMR shall obtain and pay, only when legally required, for all licenses, permits, inspections, and inspection certificates required to be obtained from or issued by any authority having jurisdiction over any part of the Work included in the Contract. All final permits, licenses, and certificates shall be delivered to County before demand is made for final payment.

**6.10 Work to Comply With Applicable Laws and Regulations**

**6.10.1** CMR shall give all notices and comply with the following specific laws, ordinances, rules, and regulations and all other applicable laws, ordinances, rules, and regulations bearing on conduct of Work as indicated and specified, including but not limited to the appropriate statutes and administrative code sections. If CMR observes that Drawings and Specifications are at variance therewith, or should CMR become aware of the development of conditions not covered by Contract Documents that will result in finished Work being at variance therewith, CMR shall promptly notify County in writing, including by e-mail, and any changes deemed necessary by County shall be made as provided in Contract for changes in Work.

- 6.10.1.1** National Electrical Safety Code, U. S. Department of Commerce
- 6.10.1.2** National Board of Fire Underwriters’ Regulations
- 6.10.1.3** Uniform Building Code, latest addition, and the California Code of Regulations, title 24, including amendments
- 6.10.1.4** Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
- 6.10.1.5** Industrial Accident Commission’s Safety Orders, State of California
- 6.10.1.6** Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes
- 6.10.1.7** Americans with Disabilities Act



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- 6.10.1.8** Government Code of the State of California
- 6.10.1.9** Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies
- 6.10.1.10** Public Contract Code of the State of California
- 6.10.1.11** California Art Preservation Act
- 6.10.1.12** U. S. Copyright Act
- 6.10.1.13** U. S. Visual Artists Rights Act

**6.10.2** CMR shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act (“CEQA”; Public Resources Code section 21000 et. Seq.)

**6.10.3** If CMR performs any Work that it knew, or through exercise of reasonable care should have known, to be contrary to any applicable laws, ordinance, rules, or regulations, CMR shall bear all costs arising therefrom.

**6.10.4** Where Specifications or Drawings state that materials, processes, or procedures must be approved by the State Fire Marshall, or other body or agency, CMR shall be responsible for satisfying requirements of such bodies or agencies.

**6.11 Safety/Protection of Persons and Property**

**6.11.1** The CMR will be solely and completely responsible for conditions of the Work Site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours.

**6.11.2** The wearing of hard hats will be mandatory at all times for all personnel on Site. CMR shall supply sufficient hard hats to properly equip all employees and visitors.

**6.11.3** Any construction review of the CMR’s performance is not intended to include a review of the adequacy of the CMR’s safety measures in, on, or near the Work Site.

**6.11.4** Implementation and maintenance of safety programs shall be the sole responsibility of the CMR.

**6.11.5** The CMR shall furnish to the County a copy of the CMR's safety plan within the time frame indicated in the Contract Documents and

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specifically adapted for the Project.

- 6.11.6** CMR shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and completion and final acceptance by County. All Work shall be solely at CMR’s risk with the exception of damage to the Work caused by “acts of God” as defined in Public Contract Code section 7105.
- 6.11.7** CMR shall take, and require Subcontractors to take, all necessary precautions for safety of workers on the Project and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. CMR shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction.
- 6.11.8** Hazards Control. CMR shall store volatile wastes in covered metal containers and remove them from the Site daily. CMR shall prevent accumulation of wastes that create hazardous conditions. CMR shall provide adequate ventilation during use of volatile or noxious substances.
- 6.11.9** CMR shall designate a responsible member of its organization on the Project, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. Name and position of person so designated shall be reported to County by CMR.
- 6.11.10** CMR shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, CMR shall correct such violation promptly.
- 6.11.11** Storm Water. CMR shall comply with any County storm water requirements that are approved by the County’s Storm Water Pollution Prevention Plan (SWPPP) and applicable to, and shall be the County’s Qualified SWPPP Practitioner, at no additional cost to the County.
- 6.11.12** In an emergency affecting safety of life or of work or of adjoining property, CMR, without special instruction or authorization, shall act, at

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its discretion, to prevent such threatened loss or injury. Any compensation claimed by CMR on account of emergency work shall be determined by agreement.

- 6.11.13**All salvage materials will become the property of the CMR and shall be removed from the Site unless otherwise called for in the Contract Documents. However, the County reserves the right to designate certain items of value that shall be turned over to the County.
- 6.11.14**All connections to public utilities and/or existing on-site services shall be made and maintained in such a manner as to not interfere with the continuing use of same by the County during the entire progress of the Work.
- 6.11.15**CMR shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions, such as extreme heat, cold, rain, snow, dry winds, flooding, or dampness.
- 6.11.16**The CMR shall protect and preserve the Work from all damage or accident, providing any temporary roofs, window and door coverings, boxing, or other construction. The CMR shall be responsible for existing structures, walks, roads, trees, landscaping, and/or improvements in working areas; and shall provide adequate protection therefor. If temporary removal is necessary of any of the above items, or damage occurs due to the Work, the CMR shall replace same at his expense with same kind, quality, and size of Work or item damaged. This shall include any adjoining property of the County and others.
- 6.11.17**CMR shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property, and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations.
- 6.11.18**CMR shall confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of Architect, and shall not interfere with the Work or unreasonably encumber Premises or overload any structure with materials. CMR shall enforce all instructions of County and Architect regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site.
- 6.11.19**CMR, CMR’s employees, Subcontractors, Subcontractors’ employees, or any person associated with the Work shall conduct themselves in a manner appropriate for a public site. No verbal or physical contact with the public, neighbors, or tenants, or profanity, or inappropriate attire or

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behavior will be permitted. County may require CMR to permanently remove non-complying persons from Project Site.

**6.11.20** CMR shall take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed, CMR shall have a civil engineer, registered as a professional engineer in California, replace them at no cost to County.

**6.11.21** In the event that the CMR enters into any agreement with owners of any adjacent property to enter upon the adjacent property for the purpose of performing the Work, CMR shall fully indemnify, defend, and hold harmless each person, entity, firm, or agency that owns or has any interest in adjacent property. The form and content of the agreement of indemnification shall be approved by the County prior to the commencement of any Work on or about the adjacent property. The CMR shall also indemnify the County as provided in the indemnification provision herein. These provisions shall be in addition to any other requirements of the owners of the adjacent property.

**6.12 Working Evenings and Weekends**

CMR may be required to work evenings and/or weekends at no additional cost to the County. CMR shall give the County seventy-two (72) hours notice prior to performing any evening and/or weekend work. CMR shall perform all evening and/or weekend work only upon County’s approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. CMR shall reimburse the County for any expenses necessitated by the CMR’s evening and/or weekend work.

**6.13 Badge Policy For Contractors**

All contractors doing work for Alameda County will provide their workers with identification badges. These badges will be worn by all members of the CMR's staff who are working in a County facility.

**6.13.1** Badges must be filled out in full and contain the following information:

- 6.13.1.1** Name of contractor and contractor’s Company logo, if any
- 6.13.1.2** Name and front facial photograph of Employee
- 6.13.1.3** Contractor's address and phone number
- 6.13.1.4** Name and phone number of Project Manager (County)

**6.13.2** Badges are to be worn when the contractor or his/her employees are on site and must be visible at all times. Contractors must inform their

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employees that they are required to allow County employees to review the information on the badges upon request

- 6.13.3** Failure to display identification badges as required by this policy may result in the assessment of fines against the CMR.

**6.14 County Drug Policy - Drug Free Work Place**

CMR, CMR's employees, and CMR's Subcontractors and their employee's shall comply with the County's policy of maintaining a drug-free workplace. Neither CMR/Subcontractor nor CMR's/Subcontractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code Section 812, including marijuana, heroin, cocaine and amphetamines, at any County facility or work site. If CMR or any employee of a contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the CMR within five (5) calendar days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this contract.

**6.15 Cleaning Up**

- 6.15.1** The CMR shall provide all services, labor, materials, and equipment necessary for protecting the Work, all Project occupants, furnishings, equipment, and building structure from damage until its completion and final acceptance by County. Dust barriers shall be provided to isolate dust and dirt from construction operations. At Completion of the Work and portions thereof, CMR shall clean to the original state any areas beyond the Work area that become dust laden as a result of the Work. The CMR must erect the necessary warning signs and barricades to ensure the safety of all Project occupants. The CMR at all times must maintain good housekeeping practices to reduce the risk of fire damage and must make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed and locations where there is an increased risk of fire.

- 6.15.2** CMR at all times shall keep Premises free from debris such as waste, rubbish, and excess materials and equipment caused by the Work. CMR shall not leave debris under, in, or about the Premises, but shall promptly remove same from the Premises on a daily basis. If CMR fails to clean up, County may do so and the cost thereof shall be charged to CMR. If Contract is for work on an existing facility, CMR shall also perform specific clean-up on or about the Premises upon request by the County as it deems necessary for the continuing use of the facility. CMR shall comply with all related provisions of the Specifications.

- 6.15.3** If the Construction Manager, Architect, or County observes the

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accumulation of trash and debris, the County will give the CMR a 24-hour written notice to mitigate the condition.

**6.15.4** Should the CMR fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by the County, the County will then perform the clean-up. All cost associated with the clean-up work (including all travel, payroll burden, and costs for supervision) will be deducted from the GMP, or County may withhold those amounts from payment(s) to CMR.

**7. SUBCONTRACTORS**

**7.1 CMR Shall Provide Subcontractor Information**

CMR shall provide the County with information for all Subcontracts as indicated in the CMR's Submittals and Schedules Section herein.

**7.2 No Contractual Relationship Between County and Subcontractors**

No contractual relationship exists between the County and any Subcontractor, supplier, or sub-subcontractor supplier, or sub-subcontractor by reason of this Contract.

**7.3 CMR Binds Every Subcontractor by Terms of Contract Documents**

CMR agrees to bind every Subcontractor by terms of the Contract Documents as far as those terms are applicable to Subcontractor's work. If CMR shall subcontract any part of the Work, CMR shall be as fully responsible to County for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, as it is for acts and omissions of persons directly employed by CMR. The divisions or sections of the Specifications are not intended to control the CMR in dividing the Work among Subcontractors or limit the work performed by any trade.

**7.3.1** In a contract between the CMR and any Subcontractor, and in a contract between a Subcontractor and any Subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the Contract between the County and the CMR. If CMR provided written notice to any Subcontractor that is not a member of the CMR entity, prior to or at the time the Subcontractor's bid is requested, that a bond may be required and the Subcontractor subsequently is unable or refuses to furnish a bond to the CMR, then the CMR may withhold retention proceeds in excess of the percentage specified in the Contract between the County and the CMR from any payment made by the CMR to the Subcontractor.

**7.3.2** Notwithstanding the terms of this Contract, any contract between the

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CMR and a contractor or Subcontractor shall be subject to provisions of Section 2782.05 of the Civil Code.

**7.4 No Waiver of Obligations**

County's consent to, or approval of, or failure to object to, any Subcontractor under this Contract shall not in any way relieve CMR of any obligations under this Contract and no such consent shall be deemed to waive any provisions of this Contract.

**7.5 CMR to Familiarize Itself with Laws**

CMR is directed to familiarize itself with sections 4100 through 4114 of the Public Contract Code of the State of California, as regards subletting and subcontracting, and to comply with all applicable requirements therein. In addition, CMR is directed to familiarize itself with sections 1720 through 1861 of the Labor Code of the State of California, as regards the payment of prevailing wages and related issues, and to comply with all applicable requirements therein all including, without limitation, section 1775 and the CMR's and Subcontractors' obligations and liability for violations of prevailing wage law and other applicable laws.

**7.6 Subcontractor Substitutions**

No CMR whose Bid is accepted shall, without consent of the awarding authority and in full compliance with section 4100, et seq, of the Public Contract Code, including, without limitation, sections 4107, 4107.5, and 4109 of the Public Contract Code, either:

- 7.6.1** Substitute any person as a Subcontractor in place of the Subcontractor designated in the original Bid; or
- 7.6.2** Permit any Subcontract to be assigned or transferred, or allow any portion of the Work to be performed by anyone other than the original Subcontractor listed in the Bid; or
- 7.6.3** Sublet or subcontract any portion of the Work in excess of one-half of one percent (1/2 of 1%) of the CMR's total bid as to which his original bid did not designate a Subcontractor.

**7.7 Subcontractor Coordination**

The CMR shall be responsible for the coordination of the trades, Subcontractors, sub-subcontractors, and material or equipment suppliers working on the Project.

**7.8 Subcontractor Relations**

CMR is solely responsible for settling any differences between the CMR and its Subcontractor(s) or between Subcontractors.

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**7.9 Assignment or Termination**

CMR must include in all of its subcontracts the assignment provisions as indicated in the Termination section of these General Conditions.

**8. OTHER CONTRACTS/CONTRACTORS**

**8.1 County Right to Perform**

County reserves the right to let other contracts, and/or to perform work with its own forces, in connection with the Project. CMR shall accommodate other County and other contractors' reasonable opportunity for introduction and storage of their materials and performance of their work and shall properly coordinate and connect CMR's Work with the work of County and other contractors.

**8.2 Protection of Work**

In addition to CMR's obligation to protect its own Work, CMR shall protect the work of County and any other contractor that CMR encounters while performing Work.

**8.3 Coordination with Other Work**

If any part of CMR's Work depends on proper execution or relies upon work of the County or any other contractor, the CMR shall inspect and promptly report to the County in writing, including by e-mail, before proceeding with its Work any defects in County's or any other contractor's work that render CMR's Work unsuitable for proper execution. CMR shall be held accountable for damages to County for County's or any other contractor's work that CMR failed to inspect or reasonably should have inspected. CMR's failure to inspect and report shall constitute CMR's acceptance of all County's or other contractor's work as fit and proper for reception of CMR's Work, except as to defects that may develop in County's or other contractor's work after execution of CMR's Work.

**8.4 Measurement of Work Performed**

To ensure proper performance of the Work, CMR shall measure and inspect work already in place and shall at once report to the County in writing, including by e-mail, any discrepancy between the work already in place and the Contract Documents.

**8.5 Knowledge of Other Work**

CMR shall ascertain to its own satisfaction the scope of the Project and nature of any County-performed work or other contracts that have been or may be awarded by County in performance of the Project so that CMR can perform the Work considering the other contracts, if any.



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**8.6 No Exclusive Occupancy of Site**

Nothing herein contained shall be interpreted as granting to CMR exclusive occupancy of the Site, the Premises, or of the Project. CMR shall not cause any unnecessary hindrance or delay to the use and/or operation(s) of the Premises and/or to County or any other contractor working on the Project. If simultaneous performance of any contract or operation is likely to cause interference with performance of CMR’s Contract, CMR shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the County of the resolution.

**9. DRAWINGS AND SPECIFICATIONS**

**9.1 List of all Drawings**

A complete list of all Drawings that form a part of the Contract is to be found as an index on the Drawings themselves, and/or may be provided to the CMR and/or in the Table of Contents.

**9.2 Technical and Trade Words**

Materials or Work described in words that so applied have a well known technical or trade meaning shall be deemed to refer to recognized standards, unless noted otherwise.

**9.3 Trade Name or Trade Term**

It is not the intention of this Contract to go into detailed descriptions of any materials and/or methods commonly known to the trade under “trade name” or “trade term.” The mere mention or notation of “trade name” or “trade term” shall be considered a sufficient notice to CMR that it will be required to complete the work so named, complete, finished, and operable, with all its appurtenances, according to the best practices of the trade.

**9.4 The Naming of Any Material and/or Equipment Shall Mean Furnishing**

The naming of any material and/or equipment shall mean furnishing and installing of same, including all incidental and accessory items thereto and/or labor therefore, as per best practices of the trade(s) involved, unless specifically noted otherwise.

**9.5 Contract Documents Are Complementary**

Contract Documents are complementary, and what is called for by one shall be binding as if called for by all. As such, Drawings and Specifications are intended to be fully cooperative and to agree. However, if CMR observes that Drawings and Specifications are in conflict, CMR shall promptly notify County and Architect in writing, including by e-mail, and any necessary changes shall be made as provided in the Contract Documents.

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**9.6 Drawings and Specifications Are Intended to Comply with All Laws**

Drawings and Specifications are intended to comply with all laws ordinances, rules, and regulations of constituted authorities having jurisdiction, and where referred to in the Contract Documents, the laws, ordinances, rules, and regulations shall be considered as a part of the Contract within the limits specified. CMR shall bear all expense of correcting work done contrary to the laws, ordinances, rules, and regulations.

**9.7 Plans, Drawings, Designs, Specifications are County Property**

All copies of Plans, Drawings, Designs, Specifications and copies of other incidental architectural and engineering work, or copies of other Contract Documents furnished by County, are the property of County. They are not to be used by CMR in other work and, with the exception of signed sets of Contract Documents, are to be returned to County on request at Completion of Work, or may be used by County as it may require without any additional costs to County. Neither the CMR nor any Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect. County hereby grants the CMR, Subcontractors, sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings prepared for the Project in the execution of their Work under the Contract Documents.

**9.8 Order of Precedence**

In the case of discrepancy or ambiguity in the Contract Documents the order of precedence in the Contract shall prevail.

**9.9 Resolution of Discrepancy or Ambiguity**

In the case of discrepancy or ambiguity solely between and among the Drawings and Specifications, the discrepancy or ambiguity shall be resolved in favor of the interpretation that will provide County with the functionally complete and operable Project as described in the Drawings and Specifications.

**9.10 County Clarification**

In case of ambiguity, conflict, or lack of information, County will furnish clarifications with reasonable promptness. Should any clarification, in the opinion of CMR, cause an increase in the GMP, CMR may request a change in the GMP and/or Contract. Within seven (7) days after receipt of the interpretation or request, CMR to submit to the Construction Manager a detailed description of the Contract requirements that were exceeded and the resulting change in cost.

**10. CMR'S SUBMITTALS AND SCHEDULES**

Refer to Section 01 33 00 "Submittal Requirements." CMR's submittals shall comply with the  
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provisions and requirements of the Specifications.

**10.1 Schedule of Work, Schedule of Submittals, and Schedule of Values**

Within ten (10) calendar days after the date of the Notice to Proceed (unless otherwise specified in the Specifications), the CMR shall prepare and submit to the County for review, in a form supported by sufficient data to substantiate its accuracy as the County may require.

**10.1.1 Preliminary Schedule**

CMR shall provide a preliminary schedule of construction indicating the starting and completion dates of the various stages of the Work, including any information and following any form as may be specified in the Specifications. Once approved by County, this shall become the Construction Schedule. The Construction Schedule shall include and identify all tasks that are on the Project’s critical path with a specific determination of the start and completion of each critical path task as well as all contract milestones and each milestone’s completion date(s) as may be required by the County, and the date of Project Completion.

**10.1.1.1 Proposed Advanced Schedule.** The County is not required to accept an early completion (“advanced”) schedule; i.e., one that shows early completion dates for the Contract Completion or milestones. CMR shall not be entitled to extra compensation if the County allows the CMR to proceed performing the Contract on an earlier (“advanced”) schedule and CMR completes the Project, for whatever reason, beyond the date shown in that earlier (“advanced”) schedule, but within the Time for Completion indicated in the Contract. A schedule showing the Work completed in less than the time for Completion indicated in the Contract, shall be considered to have Project Float.

**10.1.1.2 Float or Slack in the Schedule.** Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the Construction Schedule. Preliminary Float or slack is not for the exclusive use of or benefit of either the County or the CMR, but its use shall be determined solely by the County.

**10.1.1.3 Schedule of Submittals.** The CMR shall provide a preliminary schedule of submittals, including Shop Drawings, Product Data, and Samples submittals. Once approved by County, this shall become the Submittal Schedule. All submittals shall be forwarded to the County by the date indicated on the approved Submittal Schedule, unless an earlier date is necessary to maintain the Construction Schedule, in which case those submittals shall be

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forwarded to the County so as not to delay the Construction Schedule.

**10.1.2 Preliminary Schedule of Values**

The CMR shall provide a preliminary schedule of values for all component parts of the Work for which progress payments may be requested. The schedule of values must include quantities and prices of items totaling the GMP and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. The preliminary schedule of values shall include, at a minimum, the following information and the following structure:

**10.1.2.1** Divided into at least the following categories:

- 10.1.2.1.1 CMR's Fee;
- 10.1.2.1.2 CMR's General conditions;
- 10.1.2.1.3 Layout;
- 10.1.2.1.4 Mobilization;
- 10.1.2.1.5 Submittals;
- 10.1.2.1.6 Bonds and insurance;
- 10.1.2.1.7 Close-out documentation;
- 10.1.2.1.8 Demolition;
- 10.1.2.1.9 Installation;
- 10.1.2.1.10 Rough-in;
- 10.1.2.1.11 Finishes;
- 10.1.2.1.12 Testing;
- 10.1.2.1.13 Punchlist and acceptance.

**10.1.2.2** Divided by each of the following areas:

- 10.1.2.2.1 Site work;
- 10.1.2.2.2 By each building;
- 10.1.2.2.3 By each floor.

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- 10.1.3** The preliminary schedule of values shall not provide for values any greater than the following percentages of the Contract value:
- 10.1.3.1** Mobilization and layout combined to equal not more than 1%;
  - 10.1.3.2** Submittals, samples and shop drawings combined to equal not more than 3%;
  - 10.1.3.3** Bonds and insurance combined to equal not more than 2%.
- 10.1.4** Closeout Documentation. Closeout documentation shall have a value in the preliminary schedule of not less than 5%. The value for Closeout Documentation shall be in addition to and shall not be a part of the Contract retention.
- 10.1.5** Notwithstanding any provision of the Contract Documents to the contrary, payment of the CMR's overhead, supervision, general conditions costs, and profit, as reflected in the Cost Breakdown, shall be paid by the County in equal installments, based on percentage complete, with the disbursement of Progress Payments and the Final Payment.
- 10.1.6** CMR shall certify that the preliminary schedule of values as submitted to the County is accurate and reflects the costs as developed in preparing CMR's bid. The preliminary schedule of values shall be subject to the County's review and approval of the form and content thereof. In the event that the County objects to any portion of the preliminary schedule of values, the County shall notify the CMR, in writing, including by e-mail, of the County's objection(s) to the preliminary schedule of values. Within five (5) calendar days of the date of the County's written objection(s), CMR shall submit a revised preliminary schedule of values to the County for review and approval. The foregoing procedure for the preparation, review and approval of the preliminary schedule of values shall continue until the County has approved the entirety of the preliminary schedule of values.
- 10.1.7** Once the preliminary schedule of values is approved by the County, this shall become the Schedule of Values. The Schedule of Values shall not be thereafter modified or amended by the CMR without the prior consent and approval of the County, which may be granted or withheld in the sole discretion of the County.
- 10.1.8** Safety Plan. The CMR shall provide a preliminary Safety Plan specifically adapted for the Project. CMR's Safety Plan shall comply with the following requirements:
- 10.1.8.1** All applicable requirements of California Division of

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Industrial Safety (“CalOSHA”) and/or of the United States Occupational Safety and Health Administration (“OSHA”).

**10.1.8.2** All provisions regarding Project safety, including all applicable provisions in these General Conditions.

**10.1.8.3** CMR’s Safety Plan shall be prepared in both English and in the predominate language(s) of the CMR’s and its Subcontractors’ employees.

**10.1.9** Complete Subcontractor List. The CMR shall provide a preliminary Subcontractor List stating the name, address, telephone number, facsimile number, California State Contractors License number, classification, and monetary value of all Subcontracts for parties furnishing labor, material, or equipment for the Project.

**10.1.10** General Requirements. CMR must provide all schedules both in hard copy and electronically, in a format (e.g., Microsoft Project or Primavera) approved in advance by the County.

**10.1.10.1** The County will review the schedules submitted and the CMR shall make changes and corrections in the schedules as requested by the County and resubmit the schedules until approved by the County.

**10.1.10.2** The County shall have the right at any time to revise the Schedule of Values if, in the County's sole opinion, the Schedule of Values does not accurately reflect the value of the Work performed.

**10.1.10.3** All submittals and schedules must be approved by the County before CMR can rely on them as a basis for payment.

**10.2 Monthly Progress Schedule(s)**

**10.2.1** Upon request by the County, CMR shall provide Monthly Progress Schedule(s) to the County. A Monthly Progress Schedule shall update the approved Construction Schedule or the last Monthly Progress Schedule, showing all work completed and to be completed. The monthly Progress Schedule shall be sent within the timeframe requested by the County and shall be in a format acceptable to the County and contain a written narrative of the progress of work that month and any changes, delays, or events that may affect the work. The process for County approval of the Monthly Progress Schedule shall be the same as the process for approval of the Construction Schedule.

**10.2.2** CMR shall also submit Monthly Progress Schedule(s) with all payment

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applications.

**10.3 Material Safety Data Sheets (MSDS)**

CMR is required to ensure Material Safety Data Sheets are available in a readily accessible place at the Work Site for any material requiring a Material Safety Data Sheet per the Federal “Hazard Communication” standard, or employees right to know law. The CMR is also required to ensure proper labeling on substances brought onto the Project Site and that any person working with the material or within the general area of the material is informed of the hazards of the substance and follows proper handling and protection procedures. Two additional copies of the Material Safety Data Sheets shall also be submitted directly to the County.

**10.4 Logistic Plan**

CMR shall provide a staging and logistics plan identifying laydown areas, loading and unloading areas, crane locations, fence locations, temporary utility connections, trailer locations, and emergency evacuation meeting area. This Logistics Plan must be approved by the County prior to the CMR mobilizing on the Site.

**11. SITE ACCESS, CONDITIONS, AND REQUIREMENTS**

**11.1 Site Investigation**

CMR acknowledges that it made a careful investigation of the Site and thoroughly familiarized itself with the requirements of the Contract. By the act of executing the Contract, CMR shall be deemed to have made a complete study and investigation, and to be familiar with and accepted the existing conditions of the Site.

**11.2 Soils Investigation Report**

**11.2.1** When a soils investigation report obtained from test holes at Site is available, that report shall be available to the CMR but shall not be a part of this Contract. Any information obtained from that report or any information given on Drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, does not form a part of this Contract, and CMR may not rely thereon. By submitting its bid, CMR acknowledges that it has made visual examination of Site and has made whatever tests CMR deems appropriate to determine underground condition of soil.

**11.2.2** CMR agrees that no claim against County will be made by CMR for damages and hereby waives any rights to damages if, during progress of Work, CMR encounters subsurface or latent conditions at Site materially differing from those shown on Drawings or indicated in Specifications, or for unknown conditions of an unusual nature that differ materially from

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those ordinarily encountered in the work of the character provided for in Plans and Specifications, except as indicated in the provisions of these General Conditions regarding trenches, trenching, and/or existing utility lines.

### **11.3 Access to Work**

County and its representatives shall at all times have access to Work wherever it is in preparation or progress, including storage and fabrication. CMR shall provide safe and proper facilities for such access so that County's representatives may perform their functions.

### **11.4 Layout and Field Engineering**

**11.4.1** All field engineering required for layout of this Work and establishing grades for earthwork operations shall be furnished by CMR at its expense. This Work shall be done by a qualified, California-registered civil engineer approved in writing by County and Architect. Any required Record and/or As-Built Drawings of Site development shall be prepared by the approved civil engineer.

**11.4.2** The CMR shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed. County shall not be liable for any claim for allowances because of CMR's error or negligence in acquainting itself with the conditions at the Site.

**11.4.3** CMR shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the prior written approval of County. CMR shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of County and with County's approval.

### **11.5 Utilities**

Utilities shall be provided as indicated in the Specifications.

### **11.6 Sanitary Facilities**

Sanitary facilities shall be provided as indicated in the Specifications.

### **11.7 Surveys**

CMR shall provide surveys done by a California-licensed civil engineer surveyor to determine locations of construction, grading, and site work as required to perform the Work.



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**11.8 Regional Notification Center**

The CMR, except in an emergency, shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the County, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the CMR unless an inquiry identification number has been assigned to the CMR or any Subcontractor and the CMR has given the County the identification number. Any damages arising from CMR's failure to make appropriate notification shall be at the sole risk and expense of the CMR. Any delays caused by failure to make appropriate notification shall be at the sole risk of the CMR and shall not be considered for an extension of the Contract time.

**11.9 Existing Utility Lines**

**11.9.1** Pursuant to Government Code section 4215, County assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities located on the construction Site at the time of commencement of construction under this Contract with respect to any such utility facilities that are not identified in the Plans and Specifications. CMR shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of County or the owner of a utility to provide for removal or relocation of such utility facilities.

**11.9.2** Locations of existing utilities provided by County shall not be considered exact, but approximate within reasonable margin and shall not relieve CMR of responsibilities to exercise reasonable care nor costs of repair due to CMR's failure to do so. County shall compensate CMR for the costs of locating, repairing damage not due to the failure of CMR to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such work.

**11.9.3** No provision herein shall be construed to preclude assessment against CMR for any other delays in completion of the Work. Nothing in this Article shall be deemed to require County to indicate the presence of existing service laterals, appurtenances, or other utility lines, with the exception of main or trunk utility lines. Whenever the presence of these utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the Site.

**11.9.4** If CMR, while performing Work, discovers utility facilities not identified by County in Contract Plans and Specifications, CMR shall immediately, but in no case longer than two (2) business days, notify the County and the

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utility in writing. The cost of repair for damage to above-mentioned visible facilities without prior written notification to the County shall be borne by the CMR.

**11.10 Notification**

CMR understands, acknowledges and agrees that the purpose for prompt notification to the County pursuant to these provisions is to allow the County to investigate the condition(s) so that the County shall have the opportunity to decide how the County desires to proceed as a result of the condition(s). Accordingly, failure of CMR to promptly notify the County in writing, including by e-mail, pursuant to these provisions, shall constitute CMR's waiver of any claim for damages or delay incurred as a result of the condition(s).

**11.11 Hazardous Materials**

CMR shall comply with all provisions and requirements of the Contract Documents related to hazardous materials including, without limitation, Hazardous Materials Procedures and Requirements.

**11.12 No Signs**

Neither the CMR nor any other person or entity shall display any signs not required by law or the Contract Documents at the Site, fences trailers, offices, or elsewhere on the Site without specific prior written approval of the County.

**11.13 Nature of the Work**

CMR represents that it performed a careful examination of Contract Documents and has a complete understanding of the nature, extent, and location of Work to be performed. CMR represents that it has completed the following:

**11.13.1**CMR visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions and federal, state and local laws, and regulations that in any manner may affect cost, progress, performance, or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences, or procedures of construction to be employed by CMR and safety precautions and programs incident thereto;

**11.13.2**CMR conducted or obtained and has understood all examinations, investigations, explorations, tests, reports, and studies that pertain to the subsurface conditions, as-built conditions, underground facilities, and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance, or furnishing of Work, as CMR considers necessary for the performance or furnishing of Work, within the

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Contract Time, at the GMP, and in accordance with the terms and conditions of Contract Documents, including specifically the provisions of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies, or similar information or data are or will be required by CMR for such purposes;

**11.13.3**CMR 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;

**11.13.4**CMR gave County written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and the actual conditions, and the written resolution thereof by County is acceptable to CMR;

**11.13.5**CMR made a complete disclosure in writing to County of all facts bearing upon any possible interest, direct or indirect, that CMR believes any representative of County or other officer or employee of County presently has or will have in this Contract or in the performance thereof or in any portion of the profits thereof;

**11.13.6**CMR is charged with all information and knowledge that a reasonable contractor would ascertain from having performed this required work, investigation, research, and analysis. GMP prices must include entire cost of all work "incidental" to completion of the Work.

**11.13.7**CMR has notified County in writing of any discrepancies or omissions or of any doubt, questions, or ambiguities about the meaning of any of the Contract Documents.

**11.13.8**CMR represents that it is competent, knowledgeable, and has special skills with respect to the nature, extent, and inherent conditions of the Work to be performed. CMR further acknowledges that there are certain peculiar and inherent conditions existent in the construction of the Work that may create, during the Work, unusual or peculiar unsafe conditions hazardous to persons and property.

**11.13.9**CMR expressly acknowledges that it is aware of such peculiar risks and that it has the skill and experience to foresee and to adopt protective measures to adequately and safely perform the Work with respect to such hazards.

**11.14** Conditions Shown on the Contract Documents

Information as to underground conditions, as-built conditions, or other conditions or obstructions, indicated in the Contract Documents, e.g., on Drawings or in Specifications, has been obtained with reasonable care, and has been recorded in

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good faith. However, County only warrants, and CMR may only rely, on the accuracy of limited types of information.

**11.14.1**As to above-ground conditions or as-built conditions shown or indicated in the Contract Documents, there is no warranty, express or implied, or any representation express or implied, that such information is correctly shown or indicated. This information is verifiable by independent investigation and CMR made such verification a. CMR did and shall rely on the results of its own independent investigation. CMR did not and shall not rely on County-supplied information regarding above-ground conditions or as-built conditions.

**11.14.2**As to any subsurface condition shown or indicated in the Contract Documents, CMR may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated. County is not responsible for the completeness of such information for pricing or construction; nor is County responsible in any way for any conclusions or opinions of CMR drawn from such information; nor is County responsible for subsurface conditions that are not specifically shown (for example, County is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown).

**12. TRENCHES**

**12.1 Trenches Greater Than Five Feet**

Pursuant to Labor Code section 6705, if the GMP exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the CMR shall, in advance of excavation, promptly submit to the County and/or a registered civil or structural engineer employed by the County or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

**12.2 Excavation Safety**

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the County or by the person to whom authority to accept has been delegated by the County.

**12.3 No Tort Liability of County**

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort

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liability upon the County or any of its employees.

**12.4 No Excavation Without Permits**

The CMR shall not commence any excavation Work until it has secured all necessary permits including the required CalOSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

**12.5 Discovery of Hazardous Waste and/or Unusual Conditions and/or Unforeseen Conditions**

**12.5.1** Pursuant to Public Contract Code section 7104, if the Work involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, the CMR shall immediately, but in no case longer than two (2) business days, and before the following conditions are disturbed, notify the County, in writing, including by e-mail, of any:

**12.5.1.1** Material that, in CMR’s opinion, may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, and requires removal to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

**12.5.1.2** Subsurface or latent physical conditions at the Site differing from those indicated.

**12.5.1.3** Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in Work .

**12.5.2** The County shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the CMR’s cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described herein.

**12.5.3** In the event that a dispute arises between County and the CMR whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the CMR’s cost of, or time required for, performance of any part of the Work, the CMR shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The CMR shall retain any and all rights provided either by Contract or by law that pertain to the resolution of disputes and protests, which include the requirement that CMR complies with the notice and PCO provisions of the Contract Documents. CMR’s failure to submit a PCO pursuant to the terms of the Contract Documents shall be deemed a waiver of CMR’s right to an

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adjustment of the GMP of Contract Time.

**13. INSURANCE AND BONDS**

**13.1 Insurance**

Unless different provisions and/or limits are indicated in the Special Conditions, all insurance required of CMR and/or its Subcontractor(s) shall be in the amounts and include the provisions as set forth herein.

**13.1.1 Commercial General Liability and Automobile Liability Insurance**

**13.1.1.1** CMR shall procure and maintain, during the performance of the Work of this Contract, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect CMR, County, Construction Manager(s), and Architect(s) from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under this Contract. This coverage shall be provided in a form at least as broad as the Insurance Services Office (ISO) standard form. CMR shall ensure that Products Liability and Completed Operations coverage and Fire Damage Liability, and any Auto including owned, non-owned, and hired, are included within the above policies and at the required limits, or CMR shall procure and maintain these coverages separately.

**13.1.1.2** CMR's deductible or self-insured retention for its Commercial General Liability Insurance policy shall not exceed \$25,000 unless approved in writing by County.

**13.1.2 Umbrella Liability Insurance**

**13.1.2.1** CMR may procure and maintain, during the life of this Contract, an Umbrella Liability Insurance Policy to meet the policy limit requirements of the required policies if CMR's underlying policy limits are less than required.

**13.1.2.2** There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect CMR, County, Construction Manager(s), Project Manager(s), and Architect(s) in amounts and including the provisions as set forth in the Supplementary Conditions (if any) and/or Special Conditions, and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

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**13.1.3** Subcontractor(s): CMR shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with minimum limits equal to the amounts required of the CMR.

**13.1.4** Workers' Compensation and Employers' Liability Insurance

**13.1.4.1** In accordance with provisions of section 3700 of the California Labor Code, the CMR and every Subcontractor shall be required to secure the payment of compensation to its employees.

**13.1.4.2** CMR shall procure and maintain, during the life of this Contract, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under this Contract, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. CMR shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by CMR's insurance. If any class of employee or employees engaged in Work under this Contract, on or at the Site of the Project, are not protected under the Workers' Compensation Insurance, CMR shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

**13.1.5** Builder's Risk Insurance: Builder's Risk "All Risk" Insurance.

**CMR DOES NOT NEED TO CARRY BUILDER'S RISK INSURANCE ON THIS PROJECT.**

**13.1.6** Proof of Carriage of Insurance and Other Requirements: Endorsements and Certificates.

**13.1.6.1** CMR shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract, until CMR and its Subcontractor(s) have procured all required insurance and CMR has delivered in duplicate to the County complete endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained , and the County has approved these documents.

**13.1.6.2** Endorsements, certificates and insurance policies shall include the following:

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13.1.6.2.1 A clause stating:

“This policy shall not be amended, canceled or modified and the coverage amounts shall not be reduced until notice has been mailed to County, Architect, and Construction Manager stating date of amendment, modification, cancellation or reduction. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice.”

In lieu of receiving an endorsement with this clause, the County may, at its sole discretion, accept written notification from CMR and its insurer to the County of any amendments, modifications, cancellations or reduction in coverage, not less than thirty (30) days prior to such coverage changes occur.

13.1.6.2.2 Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

**13.1.6.3** All endorsements, certificates and insurance policies shall state that County, its Supervisors, employees and agents, Construction Manager(s), Project Manager(s), Architect(s) and the **Hayward Area Recreational Parks District** are named additional insureds under all policies except Workers’ Compensation Insurance and Employers’ Liability Insurance.

**13.1.6.4** CMR’s and Subcontractors’ insurance policy(s) shall be primary and non-contribution to any insurance or self-insurance maintained by County, its Supervisors, employees and/or agents, Construction Manager(s), Project Manager(s), and/or Architect(s).

**13.1.6.5** All endorsements shall waive any right to subrogation against any of the named additional insureds.

**13.1.6.6** All policies shall be written on an occurrence form.

**13.1.6.7** Unless otherwise stated in the Special Conditions, all of CMR’s insurance shall be with admitted insurance companies with an A.M. Best rating of no less than **A: VII**.

**13.1.6.8** The insurance requirements set forth herein shall in no way limit the CMR’s liability arising out or relating to the performance of the Work or related activities.

**13.1.6.9** Failure of CMR and/or its Subcontractor(s) to comply with the insurance requirements herein shall be deemed a material



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breach of the Agreement.

**13.1.7 Insurance Policy Limits.** Unless different limits are indicated in the Special Conditions, the limits of insurance shall not be less than the following amounts:

<b>Commercial General Liability</b>	Combined Single Limit	\$1,000,000 per occurrence; \$2,000,000 aggregate
	Product Liability and Completed Operations	\$1,000,000 per occurrence; \$2,000,000 aggregate
<b>Automobile Liability – Any Auto</b>	Combined Single Limit	\$1,000,000 per occurrence; \$2,000,000 aggregate
<b>Workers Compensation</b>		Statutory limits pursuant to State law
<b>Employers’ Liability</b>		\$2,000,000
<b>Builder’s Risk (Course of Construction)</b>		<b>CMR DOES NOT NEED TO CARRY</b>

**13.2 Contract Security - Bonds**

**13.2.1** CMR shall furnish two surety bonds issued by a California admitted surety insurer as follows:

**13.2.1.1** Performance Bond: A bond in an amount at least equal to one hundred percent (100%) of GMP (less the Project Contingency) as security for faithful performance of this Contract.

**13.2.1.2** Payment Bond: A bond in an amount at least equal to one hundred percent (100%) of the GMP (less the Project Contingency) as security for payment of persons performing labor and/or furnishing materials in connection with this Contract.

**13.2.2** All bonds related to this Project shall be in the forms set forth in these Contract Documents and shall comply with all requirements of the Contract Documents, including, without limitation, the bond forms.

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**13.2.3** The costs for these bonds are included in the CMR’s General Conditions in its performance of the Work and shall not be a reimbursable expense. The cost of the bonds can be specified on the first payment request. Prior to obtaining these bonds, CMR shall provide the County with quotes from the proposed sureties for such bonds for approval by the County. Any cost of bonds in excess of the quotes approved by the County shall be at the sole expense of CMR.

**13.2.4** If the cost of the performance and payment bonds is requested on the first application for payment, then the CMR shall apportion the remaining amount of CMR’s General Conditions fee over its remaining payment requests.

**14. WARRANTY/GUARANTEE/INDEMNITY**

**14.1 Warranty/Guarantee**

**14.1.1** The CMR shall obtain and preserve for the benefit of the County and, where applicable, the **Hayward Area Recreational Parks District**, manufacturer’s warranties on materials, fixtures, and equipment incorporated into the Work.

**14.1.2** In addition to guarantees required elsewhere, CMR shall, and hereby does guarantee and warrant all Work against all defects for a period of **TWO (2) years** after the later of the following dates:

**14.1.2.1** The date of completion as defined in Public Contract Code section 7107, subdivision (c),

**14.1.2.2** The commissioning date for the Project, if any.

**14.1.3** At the County’s sole option, CMR shall repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a **TWO (2) year period**, or as otherwise specified in Document 00 65 36, Warranty Form, from date of Completion as defined above without expense whatsoever to County. In the event of failure of CMR and/or Surety to commence and pursue with diligence said replacements or repairs within ten (10) days after being notified in writing, including by e-mail, CMR and Surety hereby acknowledge and agree that County is authorized to proceed to have defects repaired and made good at expense of CMR and/or Surety who hereby agree to pay costs and charges therefore immediately on demand. Said notice period shall be forty-eight (48) hours for components essential to operation of the facility, including without limitation fire alarms, water, heat, security systems, and electrical systems.

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**14.1.4** If, in the opinion of County, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to County or to prevent interruption of operations of County, County will attempt to give the notice required above. If CMR or Surety cannot be contacted or does not comply with County's request for correction within a reasonable time as determined by County, County may, notwithstanding the above provision, proceed to make any and all corrections and/or provide attentions the County believes are necessary. The costs of correction or attention shall be charged against CMR and Surety of the guarantees provided in this Article or elsewhere in this Contract.

**14.1.5** The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. CMR shall furnish to County all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by County.

**14.1.6** Nothing herein shall limit any other rights or remedies available to County.

**14.2 Indemnity**

**14.2.1** To the furthest extent permitted by California law, the CMR shall indemnify, defend with legal counsel reasonably acceptable to the County, keep and hold harmless the County and its consultants, the Architect and its consultants, the Construction Manager and its consultants, separate contractors, and their respective board members, officers, representatives, contractors, agents, and employees, and the **Hayward Area Recreational Parks District** in both individual and official capacities (“Indemnitees”), against all suits, claims, liabilities, damages, losses, and expenses, including but not limited to attorney’s fees, caused by, arising out of, resulting from, or incidental to, the performance of the Work by CMR, its Subcontractors, vendors, or suppliers, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself) including the loss of use resulting therefrom, except to the extent caused by the sole negligence, active negligence or willful misconduct of the Indemnitees, and/or to any extent that would render these provisions void or unenforceable. This agreement and obligation of CMR shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by CMR to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents, in strict accordance with their

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terms, and without limitation, any stop payment notice actions or liens, including by the California Department of Labor Standards Enforcement. This indemnity obligation shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.

- 14.2.2** The CMR shall give prompt notice to the County in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if the CMR’s agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that these circumstances shall not otherwise affect the validity or enforceability of the CMR’s agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of the CMR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, the CMR shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.
- 14.2.3** In any and all claims against any of the Indemnitees by any employee of the CMR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the CMR’s indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CMR or any Subcontractor under workers’ compensation acts, disability benefit acts, or other employee benefit acts.
- 14.2.4** The defense and indemnification obligations hereunder shall survive the Completion of Work, including the warranty/guarantee period, and/or the termination of the Agreement.
- 14.2.5** CMR shall place in its Subcontractor agreements and cause its Subcontractors to agree to indemnities and insurance obligations in favor of County and other Indemnities in the exact form and substance of those contained in these General Conditions (00 72 13). CMR shall require all Subcontractors to comply with all indemnification and insurance requirements of this Contract, and CMR shall verify Subcontractor’s compliance therewith.

**15. TIME**

**15.1 Notice to Proceed**

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- 15.1.1** County may issue a Notice to Proceed within three (3) months from the date of the Notice of Award. Once CMR has received the Notice to Proceed, CMR shall complete the Work within the period of time indicated in the Contract Documents.
- 15.1.2** In the event that the County desires to postpone issuing the Notice to Proceed beyond this 3-month period, it is expressly understood that with reasonable notice to the CMR, the County may postpone issuing the Notice to Proceed. It is further expressly understood by CMR that CMR shall not be entitled to any claim of additional compensation as a result of the postponement of the issuance of the Notice to Proceed.
- 15.1.3** If the CMR believes that a postponement of issuance of the Notice to Proceed will cause a hardship to CMR, CMR may terminate the Contract. CMR's termination due to a postponement shall be by written notice to County within ten (10) days after receipt by CMR of County's notice of postponement. It is further understood by CMR that in the event that CMR terminates the Contract as a result of postponement by the County, the County shall only be obligated to pay CMR for the Work that CMR had performed at the time of notification of postponement. Should CMR terminate the Contract as a result of a notice of postponement, County shall have the authority to award the Contract to the next lowest responsive best value proposal.

**15.2 Hours of Work**

- 15.2.1** Sufficient Forces. CMR and Subcontractors shall continuously furnish sufficient forces to ensure the performance of the Work in accordance with the Construction Schedule.
- 15.2.2** Performance During Working Hour. Work shall be performed during regular working hours as permitted by the appropriate governmental agency except that in the event of an emergency, or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the County and approval of any required governmental agencies.

**15.3 Progress and Completion**

- 15.3.1** Time of the Essence. Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Agreement, the CMR confirms that the Contract Time is a reasonable period for performing the Work.
- 15.3.2** No Commencement Without Insurance. The CMR shall not commence operations on the Project or elsewhere prior to the effective date of

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insurance and bonds. The date of commencement of the Work shall not be changed by the effective date of such insurance. If CMR commences Work without insurance and bonds, all Work is performed at CMR’s peril and shall not be compensable until and unless CMR secures bonds and insurance pursuant to the terms of the Contract Documents and subject to County claim for damages.

**15.4 Schedule**

CMR shall provide to County, Construction Manager, and Architect a schedule in conformance with the Contract Documents and as required in the Notice to Proceed and the CMR’s Submittals and Schedules section of these General Conditions.

**15.5 Expeditious Completion**

The CMR shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

**16. EXTENSIONS OF TIME – LIQUIDATED DAMAGES**

**16.1 CMR’s Notice of Delay**

**16.1.1** In addition to the requirements indicated in this subsection, CMR shall notify the County pursuant to the claims provisions in these General Conditions of any anticipated delay and its cause.

**16.1.2** CMR shall, within five (5) calendar days of any delay impacting the critical path in completing the Work, notify County in writing of the causes of the delay including documentation and facts explaining the delay.

**16.1.3** Any request by CMR for an adjustment of the GMP or the Contract Time for a delay shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. CMR’s justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work.

**16.1.4** Any claim for delay must include the following information as support, without limitation:

**16.1.4.1** The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

**16.1.4.2** Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in

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the Construction Schedule that are affected by the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.)

**16.1.4.3** A recovery schedule must be submitted.

**16.1.5** County shall review the facts and extent of any noticed delay and may grant Contract Time extension(s) of time for completing Work when, in the County’s judgment, the findings of fact justify an extension.

**16.1.6** Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected.

**16.1.7** An extension of time may only be granted if CMR has timely submitted the Construction Schedule as required herein.

**16.1.8** Following submission of a notice of delay, the County may determine whether the delay is to be considered:

**16.1.8.1** Excusable and Compensable, Excusable, or Unexcused;

**16.1.8.2** How long the delay continues; and

**16.1.8.3** To what extent the prosecution and Completion of the Work might be delayed thereby.

**16.1.9** CMR’s failure to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed CMR’s waiver of its right to assert a claim for a delay.

**16.2 Excusable and Compensable Delay(s)**

**16.2.1** CMR is not entitled to additional compensation for any delay, even a delay caused by Adverse Weather or an Excusable Delay, unless all of the following conditions are met:

**16.2.1.1** The County is responsible for the delay;

**16.2.1.2** The delay is unreasonable under the circumstances involved and impacts the critical path of the Work and extends the most current Contract Completion date;

**16.2.1.3** The delay was not within the contemplation of County and CMR;

**16.2.1.4** CMR complies with the claims procedure of the Contract Documents;

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**16.2.1.5** The delay could not have been avoided or mitigated by the CMR's care, prudence, foresight, and diligence; and

**16.2.1.6** The delay extends the most current Contract Completion date, and is not concurrent with a CMR caused delay or other type of Excusable Delay.

**16.3 Excusable Delay(s)**

**16.3.1** An "Excusable Delay" shall mean an interruption of the Work beyond the reasonable control of the CMR and that:

**16.3.1.1** Could have not been avoided by the CMR exercising care, prudence, foresight, and diligence, and

**16.3.1.2** Actually extended the most current Project Completion date.

**16.3.2** The CMR may be entitled to an extension of the Project Completion date if there is an Excusable Delay, but the CMR shall not be entitled to additional compensation for an Excusable Delay.

**16.3.3** Excusable Delays are limited to force majeure events and Adverse Weather that satisfies the requirements herein.

**16.3.4** CMR is aware that governmental agencies and utilities, including, without limitation, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve CMR-prepared drawings or approve a proposed installation. CMR shall include in its Schedule, time for the review of its drawings and for reasonable delays and damages that may be caused by these agencies and any reasonable delays shall not constitute an Excusable Delay

**16.4 Computation of Time / Adverse Weather**

**16.4.1** The CMR will only be allowed a time extension for Adverse Weather conditions if requested by CMR within five (5) calendar days of the Adverse Weather event, and only if **all** of the following conditions are met – thereby making the resulting delay an Excusable Delay:

**16.4.1.1** The weather conditions constitute Adverse Weather, as defined herein and further specified in the Special Conditions;

**16.4.1.2** CMR can verify that the Adverse Weather caused delays in excess of seventy-five percent (75%) for at least five (5) hours, of the normal labor and equipment force required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;



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**16.4.1.3** The CMR’s crew is dismissed as a result of the Adverse Weather; and

**16.4.1.4** The number of days of delay for the month exceeds those indicated in the Special Conditions.

**16.4.2** A day-for-day extension will only be allowed for those days in excess of those indicated in the Special Conditions.

**16.4.3** The CMR shall work seven (7) days per week, if necessary, irrespective of inclement weather, to maintain access and the Construction Schedule, and to protect the Work under construction from the effects of Adverse Weather, all at no further cost to the County.

**16.4.4** The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

**16.5 Unexcused Delay(s) - Liquidated Damages**

**16.5.1** CMR and County hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the County will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the CMR shall pay to County as fixed and liquidated damages, and not as a penalty, the amount set forth in the Contract for each calendar day of delay in Completion. CMR and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

**16.5.2** CMR shall not forfeit liquidated damages for an Excusable Delay or an Excusable and Compensable Delay.

**16.6 Acceleration**

**16.6.1** The County reserves the right to accelerate the Work of the Contract. In the event that the County directs acceleration, such directive will be only in written form. CMR shall keep cost and other Project records related to the acceleration directive separately from normal Project costs and records, and shall provide a written record of acceleration cost to the County on a daily basis.

**16.6.2** In the event that the CMR believes that some action or inaction on the part of the County constitutes an acceleration directive, the CMR shall immediately notify the County in writing that the CMR considers the actions an acceleration directive. This written notification shall detail the circumstances of the acceleration directive. CMR shall not accelerate

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work efforts until the County responds to the written notification. If acceleration is then directed or required by the County, all cost records referred to above shall be maintained by the CMR and provided to the County on a daily basis.

**16.6.3** In order to recover additional costs due to acceleration, the CMR shall document that additional expenses were incurred and paid by the CMR. Labor costs recoverable will be only overtime or shift premium costs or the cost of additional laborers brought to the site to accomplish the accelerated work effort. Equipment costs recoverable will be only the cost of added equipment mobilized to the site to accomplish the accelerated work effort.

**16.6.4** All changes to the Scope of the Work, the GMP or the Contract Time caused by any acceleration must be reflected by a written and executed Change Order.

**17. USE OF PROJECT CONTINGENCY**

**17.1 Proposed Use of Project Contingency**

**17.1.1** In accordance with the Contract Documents, CMR shall provide the County with reasonable prior written notice of its intent to use Project Contingency so that the County may review and approve CMR’s cost request.

**17.1.2** In the event CMR is unable to provide prior written notice to the County as required above, CMR may utilize the Project Contingency without the County’s prior approval, but the use of the Project Contingency shall be subject to County’s review and approval. If the County determines that the CMR’s use of Project Contingency, in whole or in part, does not comply with the Contract Documents, any disallowed amount already paid to CMR shall be promptly refunded. At its option, the County may offset the amount disallowed from any payment due or that may become due to the CMR under this Agreement.

**17.1.3** CMR’s application for payment that includes Project Contingency use shall include documentation and information in the level of detail required by the Contract Documents.

**18. CHANGES IN THE WORK**

**18.1 Conflicts, Ambiguities, Errors and Omission in the Contract Documents.**

**18.1.1** The County shall pay, through a Change Order, the costs for changes or extra work due to:

**18.1.1.1** Conflicts, ambiguities or errors or omissions in the Contract Documents that could not have been reasonably

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discovered by the CMR during CMR’s pre-construction phase services;

**18.1.1.2** Conflicts, ambiguities or errors or omissions in the subcontractor bid packages that could not have been reasonably discovered by the CMR during CMR’s pre-construction phase services; or

**18.1.1.3** Unforeseen Site Conditions.

**18.1.2** The Project Contingency may be utilized to pay for the costs for changes or extra work due to:

**18.1.2.1** Conflicts, ambiguities or errors or omissions in the Contract Documents that could have been reasonably discovered by the CMR during CMR’s pre-construction phase services, not including Unforeseen Site Conditions; or

**18.1.2.2** Conflicts, ambiguities or errors or omissions in the subcontractor bid packages that could have been reasonably discovered by the CMR during CMR’s pre-construction phase services, not including Unforeseen Site Conditions.

Once the Project Contingency has been fully depleted, any costs for items referenced in this subsection (i.e., conflicts, ambiguities or errors or omissions in the Contract Documents and/or subcontractor bid packages that could have been reasonably discovered by the CMR during CMR’s pre-construction phase services) shall be at the CMR’s expense. In no event shall there be an adjustment to the GMP for any changes or extra work due to conflicts, ambiguities or errors or omissions in the Contract Documents and/or subcontractor bid packages that could have been reasonably discovered by the CMR during CMR’s pre-construction phase services, not including Unforeseen Site Conditions.

**18.2 No Changes Without Authorization**

**18.2.1** There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order, a written Construction Change Directive, or a written Force Account Directive authorized by the County as herein provided. County shall not be liable for the cost of any extra work, any changes to the Contract Time, or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the County's governing board has authorized the same and the cost thereof has been approved in writing by an executed Change Order, Construction Change Directive, or a written Force Account Directive.

**18.2.2** The Surety, in executing and providing the Performance Bond and the

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Payment Bond, shall be deemed to have expressly agreed to any change to the Contract, any use of contingency(ies) and to any extension of time made by reason thereof.

**18.2.3** No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order, Construction Change Directive, or Force Account Directive. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

**18.2.4** CMR shall perform immediately all work that has been authorized by a fully executed Change Order, Construction Change Directive, or Force Account Directive. CMR shall be fully responsible for any and all delays and/or expenses caused by CMR's failure to expeditiously perform this Work.

**18.2.5** Should any Change Order result in an increase in the GMP, the cost of that Change Order shall be agreed to, in writing, in advance by CMR and County and be subject to the monetary limitations set forth in Public Contract Code section 20137. In the event that CMR proceeds with any change in Work without a Change Order executed by the County, Construction Change Directive, or Force Account Directive, CMR waives any claim of additional compensation or time for that additional work.

**18.2.6** CMR understands, acknowledges, and agrees that the reason for County authorization is so that County may have an opportunity to analyze the Work and decide whether the County shall proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.

**18.2.7** No payments will be made, nor will County accept proposed change orders until the CMR has complied with all the requirements of the Escrow of Bid Documentation document.

**18.3 Architect Authority**

The Architect will have authority to order minor changes in the Work not involving any adjustment in the GMP, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes shall be effected by written Change Order, Construction Change Directive, or by Architect's response(s) to RFI(s).

**18.4 Change Orders**

**18.4.1** A Change Order is a written instrument prepared and issued by the County and/or the Architect and signed by the County (as authorized by the

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County's Board of Supervisors), the CMR, and the Architect, stating their agreement regarding all of the following:

- 18.4.1.1** A description of a change in the Work;
- 18.4.1.2** The amount of the adjustment in the GMP, if any; and
- 18.4.1.3** The extent of the adjustment in the Contract Time, if any.

**18.4.2** If the County approves of a Change, the County or the Architect shall provide a written Change Order to the CMR describing the Change and setting forth the adjustment to the Contract Time and the GMP, if any, on account of that change. All Change Orders shall be full payment and final settlement of all rights for direct, indirect and consequential costs, including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, as well as any adjustments to the Contract Time. Any demand or request for an adjustment to the Contract Time or the GMP relating to any Change incorporated into a Change Order not presented by the CMR for inclusion in the Change Order shall be deemed waived. The CMR shall execute the Change Order prepared pursuant to the foregoing. After the Change Order has been prepared and forwarded to the CMR for execution, the CMR shall not modify or amend the form or content of such Change Order, or any portion thereof.

**18.5 Construction Change Directives / Unilateral Change Orders**

**18.5.1** A Construction Change Directive (or Unilateral Change Order) is a written order prepared and issued by the County, the Construction Manager, and/or the Architect and signed by the County and the Architect, directing a change in the Work. The County may as provided by law, by Construction Change Directive and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions. Any dispute as to the sum of the Construction Change Directive or timing of payment shall be resolved pursuant to the Payment and Claims and Disputes provisions herein.

**18.5.2** The County may issue a Construction Change Directive in the absence of agreement on the terms of a Change Order.

**18.6 Force Account Directives**

**18.6.1** When work, for which a definite price has not been agreed upon in advance, is to be paid for on a force account basis, all direct costs necessarily incurred and paid by the CMR for labor, material, and equipment used in the performance of that Work, shall be subject to the approval of the County and compensation will be determined as set forth

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herein.

- 18.6.2** The County will issue a Force Account Directive to proceed with the Work on a force account basis, and a not-to-exceed budget will be established by the County.
- 18.6.3** All requirements regarding direct cost for labor, labor burden, material, equipment, and markups on direct costs for overhead and profit described in this section shall apply to Force Account Directives. However, the County will only pay for actual costs verified in the field by the County or its authorized representative(s) on a daily basis.
- 18.6.4** The CMR shall be responsible for all cost related to the administration of Force Account Directive. The markup for overhead and profit for CMR modifications shall be full compensation to the CMR to administer Force Account Directive.
- 18.6.5** The CMR shall notify the County or its authorized representative(s) at least twenty-four (24) hours prior to proceeding with any of the force account work. Furthermore, the CMR shall notify the County when it has consumed eighty percent (80%) of the budget, and shall not exceed the budget unless specifically authorized in writing by the County. The CMR will not be compensated for force account work in the event that the CMR fails to timely notify the County regarding the commencement of force account work, or exceeding the force account budget.
- 18.6.6** The CMR shall diligently proceed with the work, and on a daily basis, submit a daily force account report on a form supplied by the County no later than 5:00 p.m. each day. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the force account work only. The names of the individuals performing the force account work shall be included on the daily force account reports. The type and model of equipment shall be identified and listed. The County will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to the CMR for their records. The County will not sign, nor will the CMR receive compensation for work the County cannot verify. The CMR will provide a weekly force account summary indicating the status of each Force Account Directive in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the work.
- 18.6.7** In the event the CMR and the County reach a written agreement on a set cost for the work while the work is proceeding based on a Force Account Directive, the CMR's signed daily force account reports shall be discontinued and all previously signed reports shall be invalid.

**18.7 Price Request**

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**18.7.1** Definition of Price Request. A Price Request is a written request prepared by the Architect requesting the CMR to submit to the County and the Architect an estimate of the effect of a proposed change in the Work on the GMP and the Contract Time.

**18.7.2** Scope of Price Request. A Price Request shall contain adequate information, including any necessary Drawings and Specifications, to enable CMR to provide the cost breakdowns required herein. The CMR shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.

### **18.8 Proposed Change Order**

The CMR shall submit PCO's requested by the County within fourteen (14) calendar days.

**18.8.1** Changes in GMP. A PCO shall include breakdowns pursuant to the provisions herein to validate any change in GMP.

**18.8.2** Changes in Time. A PCO shall include any changes in time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If CMR fails to request a time extension in a PCO, then the CMR is thereafter precluded from requesting time and/or claiming a delay.

**18.8.3** Unforeseen Site Conditions. If CMR submits a PCO requesting an increase in GMP and/or Contract Time that is based at least partially on CMR's assertion that CMR has encountered Unforeseen Site Conditions on the Project, then CMR shall base the PCO on provable information that, beyond a reasonable doubt and to the County's satisfaction, demonstrates that the site conditions were actually Unforeseen Site Condition. If not, the County shall deny the PCO and the CMR shall complete the Project without any increase in GMP and/or Contract Time based on that PCO.

**18.8.3.1** Time to Submit PCO. CMR shall submit its PCO within five (5) days of the date CMR discovers, or reasonably should discover, the circumstances giving rise to the proposed change order, unless additional time to submit a proposed change order is granted in writing by the County.

### **18.9 Format for Proposed Change**

The following format shall be used as applicable by the County and the CMR (e.g. Change Orders, Requests for Use Project Contingency PCO's) to communicate proposed additions and deductions to the Contract, supported by attached

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documentation. In no case shall the CMR’s total mark-up exceed 26.5%.

<b><u>SUBCONTRACTOR PERFORMED WORK</u></b>		<b><u>ADD</u></b>	<b><u>DEDUCT</u></b>
(a)	<b><u>Material</u></b> (attach itemized quantity and unit cost plus sales tax)		
(b)	<b><u>Equipment</u></b> (attach suppliers’ invoice)		
(c)	<b><u>Subtotal</u></b>		
(d)	<b><u>Mark-up</u></b> on Material and Equipment which shall not exceed a total of four percent (4%) of <b>item (c)</b> .		
(e)	<b><u>Labor</u></b> (attach itemized hours and rates that shall be no more than the “Total Hourly Rate(s)” as determined by the Department of Industrial Relations (“DIR”) for the applicable prevailing wage, <b><u>excluding</u></b> all “labor burden” that is comprised of, without limitation, State and Federal Payroll Taxes (FICA, Medicare, Unemployment, SSI), Liability Insurance, and Workers Compensation Insurance)		
(f)	<b><u>Mark-up</u></b> on Labor which shall not exceed a total of eighteen percent (18%) of <b>item (e)</b> for labor performed by the Subcontractor or Subcontractor’s Subcontractor(s) (i.e., a “second-tier” Subcontractor). This is a total cumulative mark-up permitted for all Subcontractors.		
(g)	<b><u>Subtotal</u></b>		
(h)	<b><u>CMR’s Mark-up</u></b> not to exceed four percent (4%) of <b>Item (g)</b>		
(i)	<b><u>TOTAL</u></b>		
(j)	<b><u>Time</u></b>		___ Days

<b><u>CMR PERFORMED WORK</u></b>		<b><u>ADD</u></b>	<b><u>DEDUCT</u></b>
(a)	<b><u>Material</u></b> (attach itemized quantity and unit cost plus sales tax)		
(b)	<b><u>Equipment</u></b> (attach suppliers’ invoice)		
(c)	<b><u>Subtotal</u></b>		
(d)	<b><u>Mark-up</u></b> on Material and Equipment which shall not exceed a total of seven percent (4%) of <b>item (c)</b> .		
(e)	<b><u>Labor</u></b> (attach itemized hours and rates that shall be no more than the “Total Hourly Rate(s)” as determined by the DIR for the applicable prevailing wage, <b><u>excluding</u></b> all “labor burden” that is comprised of, without limitation, State and Federal Payroll Taxes (FICA, Medicare, Unemployment, SSI), Liability		



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	Insurance, and Workers Compensation Insurance)		
(f)	<b>Mark-up</b> on Labor which shall not exceed a total of twenty percent (20%) of <b>item (e)</b> for labor performed by CMR.		
(g)	<b>TOTAL</b>		
(h)	<b>Time</b>		<b>Days</b>

**18.10 Allowable Costs for Change Orders, Construction Change Directives, Force Account Directives, and Project Contingency Use.**

**Allowable costs for** Change Orders, Construction Change Directives, Force Account Directives, and Project Contingency use shall be limited to the following costs, and all proposed cost requests by CMR, including Change Orders and Project Contingency Use, change shall include a complete itemized breakdown with the following detail:

**18.10.1 Material.** Material quantities, and types of products, and transportation costs, if applicable.

**18.10.2 Labor.** Labor breakdown by trade classification, wage rates, and estimated hours. Labor costs shall **only include** fringe benefits as determined by the DIR for the applicable prevailing wage. No other costs will be included as labor burden, including, without limitation, State and Federal Payroll Taxes (FICA, Medicare, Unemployment, SSI), Liability Insurance, and Workers Compensation Insurance). Wages shall not exceed current prevailing wages in the locality for performance of the changes. Labor shall include “First Line Supervision,” which means a working foreman or lead craft worker other than the project superintendent.

**18.10.3 Equipment.** Equipment breakdown by make, type, size, rental rates, equipment hours and transportation costs, if applicable.

**18.10.3.1** The equipment costs shall not exceed one hundred percent (100%) of the Association of Equipment Distributors (AED) rental rates or Caltrans rates, whichever is less. Hourly, daily, weekly, or monthly rates shall be used, whichever is lower. Hourly rates including operator shall not be used.

**18.10.3.2** The actual time to be paid for equipment shall be the time that the equipment is in productive operation on the Work under Contract Modification. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one half (1/2) hour. No payment will be made for time while equipment is inoperative due to breakdown, or for non workdays. In addition, the rental time shall not include the time required to move the equipment to and from the project site. No

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mobilization or demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project Site in any other way than upon the work directly related to the Contract Modification.

**18.10.3.3** Individual pieces of equipment having a replacement value of one thousand dollars (\$1,000) or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment is included as part of the markup for overhead and profit defined herein.

**18.10.3.4** Payment to the CMR for the use of equipment as set forth above shall constitute full compensation to the CMR for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to the CMR incidental to the use of the equipment.

**18.10.3.5** Should CMR, or any of its owners, officers, directors or agents, hold any ownership interest in any company, organization, association or corporation from whom rental equipment is secured. CMR shall immediately notify County of such and the price set for any such rental shall be agreed upon in advance by the CMR and the County.

**18.10.4** Mark-Up for Overhead and Profit. Markup for overhead and profit, which shall be used to compensate CMR for all costs for all administration, general conditions, and supervision, including, without limitation:

**18.10.4.1** All field, field office and home office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftsmen, schedulers, consultants, watchmen, payroll clerks, administrative assistants, labor compliance costs and secretaries.

**18.10.4.2** All field, field office and home office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service and long distance telephone calls, fax machines, temporary utilities, sanitary facilities and services, janitorial services, small tools and equipment with a cost under \$1000 each, portable scaffolding, blocking, shores, appliances, job vehicles, security and fencing, conformance to regulatory requirements including compliance to safety regulations, safety programs and meetings, cartage, warranties, As-

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Built Drawings, as well as any related maintenance costs.

**18.10.4.3** Administrative functions such as, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, expediting, engineering, drawing, detailing, revising shop drawings, carting, cleaning, protecting the work, and other incidental Work related to the change.

**18.10.4.4** All other costs and taxes required to be paid, but not included under direct costs as defined above including, without limitation, payroll taxes, social security, etc.

**18.10.4.5** All costs for CMR’s bonds and insurance.

**18.10.4.6** Taxes: Federal excise tax shall not be included. County will issue an exemption on request.

**18.10.5** Justification for any adjustment in Contract Time including a schedule analysis identifying critical schedule activities delayed by the request.

**18.10.6** If discounts by suppliers are available to the CMR, they shall be credited to the County. If materials and equipment are obtained from a supply or source owned by, or in part, by the CMR, payment therefore will not exceed current wholesale prices for such materials and equipment. If, in the opinion of the County, the cost of materials and equipment is excessive, or if the CMR fails to furnish satisfactory evidence of costs from supplier, the cost of materials and equipment shall be the lowest current wholesale price at which similar materials and equipment are available in quantities required. The County reserves the right to furnish materials and equipment required for performance of the changes, and the CMR shall have no Claim for costs or mark-ups on such materials and equipment.

**18.10.7** Cost Disallowance. Costs which will not be allowed or paid in Change Orders, Construction Change Directive, Force Account Directive, or for use of the Project Contingency, or Claim settlements under this Contract include, but are not limited to:

**18.10.7.1** interest on cost of any type other than those mandated by statute;

**18.10.7.2** Dispute or Claim preparation or filing costs;

**18.10.7.3** legal expenses;

**18.10.7.4** the costs of preparing or reviewing proposed Change Orders or Change Order proposals concerning Change Orders which are not issued by the County;

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- 18.10.7.5 lost revenues;
- 18.10.7.6 lost profits;
- 18.10.7.7 lost income or earnings;
- 18.10.7.8 rescheduling costs;
- 18.10.7.9 costs of idled equipment when such equipment is not yet at the site or has not yet been employed on the Work;
- 18.10.7.10 lost earnings or interest on unpaid retention;
- 18.10.7.11 Dispute or Claim consulting costs;
- 18.10.7.12 the costs of corporate officers or staff visiting the site or participating in meetings with the County;
- 18.10.7.13 any compensation due to the fluctuation of foreign currency conversions or exchange rates; or
- 18.10.7.14 loss of other business.

**18.11 Change Order Certification**

**18.11.1** All Change Orders and PCOs must include the following certification by the CMR. The Parties acknowledged that if a Change Order is approved that does not include this language, that Change Order shall be deemed to include this certification language:

**18.11.1.1** *The undersigned CMR approves the foregoing as to the changes, if any, and the GMP specified for each item and as to the extension of time allowed, if any, for completion of the entire Work as stated herein, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums which have no basis in fact or which CMR knows are false are at the sole risk of CMR and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. It is understood that the changes herein to the Contract shall only be effective when approved by the Board of Supervisors.*

**18.11.1.2** *It is expressly understood that the value of the extra Work or changes expressly includes any and all of the CMR's costs, expenses, field overhead, home office overhead, and profit, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs,*

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*expenses, damages, or time extensions not included are deemed waived.*

**18.12 Determination of Change Order Cost**

The amount of the increase or decrease in the GMP from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation and at the County's discretion:

**18.12.1** County acceptance of a PCO;

**18.12.2** By unit prices contained in CMR's original bid;

**18.12.3** By agreement between County and CMR.

**18.13 Acceptance of PCOs, Construction Change Directives, and Force Account Directives.**

CMR's written acceptance of a PCO, Construction Change Directive, or Force Account Directive, **shall constitute final and binding agreement to the provisions thereof and a waiver of all Disputes or Claims in connection therewith, whether direct, indirect, or consequential in nature.**

**18.13.1** Upon receipt of a PCO, Construction Change Directive, or Force Account Directive, the CMR shall promptly proceed with the change in the Work involved and advise the Construction Manager within seven (7) calendar days of the CMR's agreement or disagreement with the method, if any, provided in the PCO, Construction Change Directive, or Force Account Directive, for determining the proposed adjustment in the GMP or Contract Time.

**18.13.2** Failure to respond to and return a PCO, Construction Change Directive, or Force Account Directive, to the County within (7) days indicates the CMR's agreement therewith, including adjustment in the GMP and Contract Time or the method for determining them. CMR's agreement shall be effective immediately and shall be evidenced as a Change Order.

**18.13.3** Effect on Sureties. All alterations, extensions of time, extra and additional work, and other changes authorized by the Contract Documents may be made without securing consent of Surety(s) on the Payment Bond and/or the Performance Bond.

**18.14 Deductive Change Orders**

If CMR offers a proposed amount for a deductive Change Order(s), CMR shall include a calculation / breakdown in the identical format, percentages, and components require for an additive Change Order. Any deviation from this provision shall not be allowed.

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**18.15 Discounts, Rebates, and Refunds**

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the CMR, and the CMR shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the CMR's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein.

**18.16 Accounting Records**

With respect to portions of the Work performed by Change Orders and Construction Change Directives, the CMR shall keep and maintain cost-accounting records satisfactory to the County, which shall be available to the County on the same terms as any other books and records the CMR is required to maintain pursuant to the Contract Documents.

**18.17 Notice Required**

If the CMR is seeking an adjustment in the GMP, or any extension in the Contract Time for Completion, it shall notify the County pursuant to the provisions of the Contract Documents. No adjustment in the GMP or Contract Time shall be considered unless made in accordance with the Contract Documents. CMR shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the GMP or extension of the Contract Time resulting from such Contract adjustment shall only be authorized by a Change Order.

**18.18 Applicability to Subcontractors**

Any requirements under this Article shall be equally applicable to Change Orders or Construction Change Directives issued to Subcontractors by the CMR to the extent as required by the Contract Documents.

**18.19 Alteration to Change Order Language**

CMR shall not alter Change Orders or reserve time in Change Orders. CMR shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

**18.20 Failure of CMR to Execute Change Order**

CMR shall be in default of the Contract if CMR fails to execute a Change Order when the CMR agrees with the addition and/or deletion of the Work in that Change Order.

**19. REQUEST FOR INFORMATION**

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**19.1 CMR’s Obligations**

The CMR shall coordinate the Work so that dimensions are verified and clarifications that may affect the work are identified to allow for resolution without delaying the Work. The CMR is responsible to submit a Request for Information (“RFI”) as soon as the issue requiring clarification is identified. The CMR shall be responsible for any delay in the construction progress due to any untimely submission of a Request for Information for A/E’s review. Non-receipt of a Request for Information, or proceeding with Work pertaining to the Request for Information shall be construed as relieving the County of any Claim for added cost or extension of time.

**19.2 Diligent Review Prior to Submission**

Prior to submitting the RFI, CMR shall diligently review the Contract Documents for information responsive to the RFI, including information incorporated by reference. CMR should not issue an RFI regarding information contained in or inferable from the Contract Documents, including information incorporated by reference. An RFI is invalid if the RFI response is contained in or inferable from the Contract Documents.

**19.3 Reference Contract Documents**

Any RFI shall reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), drawing number(s), and sheet number(s), etc. The CMR shall make suggestions and interpretations of the issue raised by each RFI. An RFI cannot modify the GMP, Contract Time, or the Contract Documents.

**19.4 RFI Validity**

CMR shall be liable to the County for all costs incurred by the County associated with processing, reviewing, evaluating and responding to any RFI, including without limitation, fees of the Architect and any other design consultant to the Architect or the County, that County reasonably determines:

- 19.4.1** Does not reflect adequate or competent supervision or coordination by the CMR or any Subcontractor; or
- 19.4.2** Does not reflect the CMR's adequate or competent knowledge of the requirements of the Work or the Contract; or
- 19.4.3** Requests an interpretation or decision of a matter where the information sought is equally available to the CMR; or
- 19.4.4** Is not justified for any other reason.

**19.5 No Delay**

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CMR shall be responsible for preparing and submitting each RFI so as to not cause delay to the progress of the Work nor to cause any impact to the CMR’s labor productivity. An RFI may be considered untimely if not submitted within forty-eight (48) hours of receipt from a CMR’s subcontractor. Untimely submission of any RFI will preclude CMR from asserting any claims for delay or for labor impact against the County.

**20. PAYMENTS**

**20.1 GMP.**

The Guaranteed Maximum Price (GMP) is as defined herein and is the maximum price that the County will pay CMR as payment for all Work of the Project and is guaranteed by the CMR to be the maximum it will charge the County to Complete the Project.

**20.1.1** The GMP shall only be subject to additions and deductions as indicated in the Contract Documents.

**20.1.2** CMR acknowledges that it has reviewed and accepted the Contract Documents as complete and that CMR has no right for Change Orders or extra work due to conflicts, ambiguities or errors or omissions in the Contract Documents, if they could have been reasonably discovered by CMR during CMR’s pre-construction phase services, or in the Subcontractor bid packages, or for any Change Orders arising from Subcontractors’ performance.

**20.1.3** If the cost of the Work, excluding County-requested changes and Unforeseen Site Conditions, exceeds the GMP, adjusted from time to time by Change Order, the CMR shall pay the overrun without reimbursement by the County.

**20.1.4** If the actual cost of the Work, excluding County-requested changes, is less than the GMP, adjusted from time to time by Change Order, then the CMR shall credit the cost savings to the County in the final Change Order. CMR agrees to use all reasonable efforts to maximize cost savings for the benefit of the County.

**20.2 County Contingency (if applicable).**

A contingency identified in the Agreement which is to be used at the County’s sole discretion to pay for Change Orders, Construction Change Directives, and Force Account Directives. The County Contingency is not part of the GMP, but may be indicated in the Agreement for the County’s use.

**20.3 Disallowed Costs.**

If the CMR claims or receives payment from the County that is later disallowed by



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the County, the CMR shall promptly refund the disallowed amount to the County upon the County's request. At its option, the County may offset the amount disallowed from any payment due or that may become due to the CMR under this Agreement or any other agreement.

**20.4 Costs Not Reimbursed.**

The CMR shall not seek reimbursement for the following:

- 20.4.1** Salaries and other compensation of the CMR's personnel stationed at the CMR's principal office or offices other than the Site office, except as specifically provided herein.
- 20.4.2** Payments to CMR's employees over and above their regular pay (bonuses, incentive pay, profit sharing, severance pay, etc.).
- 20.4.3** Expenses of the CMR's principal office and offices other than the Site office.
- 20.4.4** Overhead and general expenses, except as may be expressly included herein.
- 20.4.5** CMR's capital expenses, including interest on the CMR's capital employed for the work.
- 20.4.6** Rental costs of machinery and equipment, except as specifically provided herein.
- 20.4.7** Costs due to the fault or negligence of the CMR, subcontractors, anyone directly or indirectly employed by the CMR or subcontractors, or for whose acts the CMR or subcontractors may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
- 20.4.8** Deductibles or self-insured retentions associated with the insurance required to be maintained by the CMR and the Subcontractors.
- 20.4.9** Electronic processing and personnel cost incurred by the CMR in preparing the Project schedule and schedule updates, payroll, project cost reports or project status reports and any other reports necessary to the progress of the Work.
- 20.4.10** Any costs based on percentages, rather than actual costs paid by the CMR, unless specific percentages are documented and approved by the County.
- 20.4.11** Any fees paid to design or construction industry organizations (e.g., AGC,

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ABC, AIA, etc.)

**20.4.12** Any licenses maintained by the CMR.

**20.4.13** Any cost not specifically and expressly described herein.

**20.4.14** Costs that would cause the GMP to be exceeded.

**20.5 Discounts, Rebates and Refunds.**

**20.5.1** Cash discounts obtained on payments made by the CMR shall accrue to the County if (1) before making the payment, the CMR included them in a payment request and received payment therefore from the County, or (2) the County has deposited funds with the CMR with which to make payments; otherwise, cash discounts shall accrue to the CMR.

**20.5.2** Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the County, and the CMR shall make provisions so that they can be secured. If a trade discount by the actual supplier is available to the CMR, it shall be credited to the County.

**20.5.3** Amounts, which accrue to the County in accordance with the provisions of this subsection shall be credited to the County as a deduction from the cost of the Work.

**20.6 Applications for Progress Payments**

**20.6.1** Procedures for Applications for Progress Payments. Not before the fifth (5th) day of each calendar month during the progress of the Work, CMR shall submit to the County and the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. The Application for Payment shall be notarized, if required, and supported by the following or each portion thereof unless waived by the County in writing:

20.6.1.1.1 The amount paid to the date of the Application to the CMR, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;

20.6.1.1.2 The amount being requested under the Application for Payment by the CMR on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;

20.6.1.1.3 The balance that will be due to each of such entities

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after said payment is made;

- 20.6.1.1.4 A certification that the As-Built Drawings and annotated Specifications are current;
- 20.6.1.1.5 Itemized breakdown of Work performed;
- 20.6.1.1.6 An updated and acceptable construction schedule in conformance with Section 10.1 above;
- 20.6.1.1.7 The additions to and subtractions from the GMP and Contract Time;
- 20.6.1.1.8 A total of the retentions held;
- 20.6.1.1.9 The material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the County may require from time to time;
- 20.6.1.1.10 The percentage of completion of the CMR's Work by line item;
- 20.6.1.1.11 Schedule of Values updated from the preceding Application for Payment;
- 20.6.1.1.12 A duly completed and executed conditional waiver and release upon progress payment compliant with Civil Code section 8132 from each subcontractor of any tier and supplier to be paid from the current progress payment;
- 20.6.1.1.13 A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 8134 from each subcontractor of any tier and supplier that was paid from the previous progress payment; and
- 20.6.1.1.14 A certification by the CMR of the following:

The CMR warrants title to all Work performed as of the date of this payment application. The CMR further warrants that all Work performed as of the date of this payment application is free and clear of liens, claims, security interests, or encumbrances in favor of the CMR, Subcontractors, material and equipment suppliers, workers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, except those of which the County has been

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informed.

**20.6.2** The CMR shall be subject to the False Claims Act set forth under Government Code section 12650 et seq., for information provided with any Application for Progress Payment.

**20.6.3** Prerequisites for Progress Payments. First Payment Request: The following items, if applicable, must be completed before the County will accept and/or process the CMR's first payment request:

- 20.6.3.1.1 Installation of the Project sign;
- 20.6.3.1.2 Installation of field office;
- 20.6.3.1.3 Installation of temporary facilities and fencing;
- 20.6.3.1.4 Schedule of Values;
- 20.6.3.1.5 CMR's Construction Schedule;
- 20.6.3.1.6 Schedule of unit prices, if applicable;
- 20.6.3.1.7 Submittal Schedule;
- 20.6.3.1.8 Receipt by Architect of all submittals due as of the date of the payment application;
- 20.6.3.1.9 Copies of necessary permits;
- 20.6.3.1.10 Copies of authorizations and licenses from governing authorities;
- 20.6.3.1.11 Initial progress report;
- 20.6.3.1.12 Surveyor qualifications;
- 20.6.3.1.13 Written acceptance of County's survey of rough grading, if applicable;
- 20.6.3.1.14 List of all Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;
- 20.6.3.1.15 All bonds and insurance endorsements;
- 20.6.3.1.16 Resumes of CMR's project manager, and if applicable, job site secretary, record documents recorder, and job site superintendent; and
- 20.6.3.1.17 Safety plan.

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**20.6.3.2** Second Payment Request. The County will not process the second payment request until and unless all submittals and Shop Drawings have been accepted for review by the Architect.

**20.6.3.3** No Waiver of Criteria. Any payments made to CMR where criteria set forth herein have not been met shall not constitute a waiver of said criteria by County. Instead, such payment shall be construed as a good faith effort by County to resolve differences so CMR may pay its Subcontractors and suppliers. CMR agrees that failure to submit such items may constitute a material breach of contract by CMR and may subject CMR to termination.

**20.7 Progress Payments**

**20.7.1** County’s Approval of Application for Payment. Upon receipt of a Application for Payment, the County shall act in accordance with both of the following:

20.7.1.1.1 Each Application for Payment shall be reviewed by the County as soon as practicable after receipt for the purpose of determining that the Application for Payment is a proper Application for Payment.

20.7.1.1.2 Any Application for Payment determined not to be a proper Application for Payment suitable for payment shall be returned to the CMR as soon as practicable, but not later than seven (7) calendar days, after receipt. An Application for Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing, including by e-mail, the reasons why the Application for Payment is not proper. The number of days available to the County to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the County exceeds this seven-day return requirement.

20.7.1.1.3 An Application for Payment shall be considered properly executed if funds are available for payment of the Application for Payment, and payment is not delayed due to an audit inquiry by the financial officer of the County.

**20.7.1.2** The County’s review of the CMR’s Application for Payment will be based on the County’s and the Architect’s observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the County’s and the Architect’s knowledge,

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information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

20.7.1.2.1 Observation of the Work for general conformance with the Contract Documents,

20.7.1.2.2 Results of subsequent tests and inspections,

20.7.1.2.3 Minor deviations from the Contract Documents correctable prior to Completion, and

20.7.1.2.4 Specific qualifications expressed by the Architect.

**20.7.1.3** County’s approval of the certified Application for Payment shall be based on CMR complying with all requirements for a fully complete and valid certified Application for Payment.

**20.7.2** Payments to CMR. Within thirty (30) days after approval of the Application for Payment, CMR shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and certified by CMR) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The value of the Work completed shall be CMR’s best estimate. No inaccuracy or error in said estimate shall operate to release the CMR, or any Surety upon any bond, from damages arising from such Work, or from the County's right to enforce each and every provision of this Contract, and the County shall have the right subsequently to correct any error made in any estimate for payment.

**20.7.2.1** County shall withhold five percent (5%) retention from all Progress Payments.

**20.7.2.2** The CMR shall not be entitled to have any payment requests processed, or be entitled to have any payment made for Work performed, so long as any lawful or proper direction given by the County concerning the Work, or any portion thereof, remains incomplete.

**20.7.2.3** If the County fails to make any progress payment within thirty (30) days after receipt of an undisputed and properly submitted Application for Payment from the CMR, the County shall pay interest to the CMR equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

**20.7.3** No Waiver. No payment by County hereunder shall be interpreted so as to

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imply that County has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the County may enforce each and every provision of this Contract. The County may correct or require correction of any error subsequent to any payment.

**20.7.4** Warranty of Title. If a lien or a claim based on a stop notice or stop payment notice of any nature should at any time be filed against the Work or any County property, by any entity that has supplied material or services at the request of the CMR, CMR and CMR's Surety shall promptly, on demand by County and at CMR's and Surety's own expense, take any and all action necessary to cause any such lien or a claim based on a stop notice or stop payment notice to be released or discharged immediately therefrom.

**20.7.4.1** If the CMR fails to furnish to the County within ten (10) calendar days after demand by the County, satisfactory evidence that a lien or a claim based on a stop notice or stop payment notice has been so released, discharged, or secured, the County may discharge such indebtedness and deduct the amount required therefore, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by County from any sum payable to CMR pursuant to the Contract.

**20.8 Decisions to Withhold Payment**

**20.8.1** Reasons to Withhold Payment. The County may withhold payment in whole, or in part, to the extent reasonably necessary to protect the County if, in the County's opinion, the representations to the County required herein cannot be made. The County may withhold payment, in whole, or in part, to such extent as may be necessary to protect the County from loss because of, but not limited to:

**20.8.1.1** Defective Work not remedied within Forty-Eight (48) hours of written notice to CMR;

**20.8.1.2** Stop notice, stop payment notices or other liens served upon the County as a result of the Contract;

**20.8.1.3** Liquidated damages assessed against the CMR;

**20.8.1.4** The cost to complete the Work if there exists reasonable doubt that the Work can be completed for the unpaid balance of the GMP or by the Completion Date;

**20.8.1.5** Damage to the County or other contractor(s);

**20.8.1.6** Unsatisfactory performance of the Work by the CMR;

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- 20.8.1.7** Failure to store and properly secure materials;
- 20.8.1.8** Failure of the CMR to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Schedule of Submittals, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports;
- 20.8.1.9** Failure of the CMR to maintain As-Built Drawings;
- 20.8.1.10** Erroneous estimates by the CMR of the value of the Work performed, or other false statements in an Application for Payment;
- 20.8.1.11** Unauthorized deviations from the Contract Documents;
- 20.8.1.12** Failure of the CMR to perform the Work in a timely manner in compliance with the Construction Schedule, established progress schedules, and/or completion dates;
- 20.8.1.13** Failure to properly pay prevailing wages as defined in Labor Code section 1720 et seq., and/or failure to comply with any other Labor Code requirements;
- 20.8.1.14** Failure to properly maintain or clean up the Site;
- 20.8.1.15** Failure to timely indemnify, defend, or hold harmless the County;
- 20.8.1.16** Any payments due to the County, including but not limited to payments for failed tests, utilities changes, or permits;
- 20.8.1.17** Failure to pay Subcontractor(s) or supplier(s) as required by law and by the Contract Documents;
- 20.8.1.18** Failure to pay any royalty, license or similar fees;
- 20.8.1.19** CMR is otherwise in breach, default, or in substantial violation of any provision of this Contract;
- 20.8.1.20** Failure of the CMR to submit on a timely basis all Closeout Documentation in a manner and form that is proper, sufficient, and reasonably acceptable to the County, and to not cause a delay in the Completion or approval of the Project; or
- 20.8.1.21** Failure to perform any implementation and/or monitoring



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required by any SWPPP for the Project and/or the imposition of any penalties or fines imposed therefore against CMR or County; or

**20.8.1.22** Improper use of the Project Contingency.

**20.8.2** Reallocation of Withheld Amounts. County may, in its discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, County shall make such payments on behalf of CMR. If any payment is so made by County, then that amount shall be considered a payment made under Contract by County to CMR and County shall not be liable to CMR for any payment made in good faith. These payments may be made without prior judicial determination of claim or obligation. County will render CMR an accounting of funds disbursed on behalf of CMR.

**20.8.2.1** If CMR defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, County may, after forty-eight (48) hours written notice to the CMR and, without prejudice to any other remedy, make good such deficiencies. The County shall adjust the total GMP by reducing the amount thereof by the cost of making good such deficiencies. If County deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the GMP (of at least one hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

**20.8.3** Payment After Cure. When CMR removes the grounds for declining approval, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the CMR to perform in accordance with the terms and conditions of the Contract Documents.

**20.9 Subcontractor Payments**

**20.9.1** Payments to Subcontractors. No later than seven (7) days after receipt, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, the CMR shall pay to each Subcontractor, out of the amount paid to the CMR on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The CMR shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

**20.9.2** No Obligation of County for Subcontractor Payment. The County shall have no obligation to pay, or to see to the payment of, money to a

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Subcontractor except as may otherwise be required by law.

**20.9.3 Joint Checks.** County shall have the right in its sole discretion, if necessary for the protection of the County, to issue joint checks made payable to the CMR and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the County and a Subcontractor of any tier, any obligation from the County to such Subcontractor, or rights in such Subcontractor against the County.

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**21. COMPLETION OF THE WORK**

**21.1 Completion**

**21.1.1** County will accept Completion of Contract and have the Notice of Completion recorded when the entire Work shall have been completed to the satisfaction of County.

**21.1.2** The Work may only be accepted as complete by action of the County Board of Supervisors.

**21.1.3** County, at its sole option, may accept Completion of Contract and have the Notice of Completion recorded when the entire Work shall have been completed to the satisfaction of County, except for minor corrective items, as distinguished from incomplete items. If CMR fails to complete all minor corrective items within thirty (30) days after the date of the County's acceptance of Completion, County shall withhold from the final payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by County, until the item(s) are completed.

**21.1.4** At the end of the thirty (30) day period, if there are any items remaining to be corrected, County may elect to proceed as provided herein related to adjustments to GMP, and/or County's right to perform the Work of the CMR.

**21.2 Close-Out Procedures**

**21.3 Punch List**

The CMR shall notify the Architect when CMR considers the Work complete. Upon notification, Architect will prepare a list of minor items to be completed or corrected ("Punch List"). The CMR and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on Punch List does not alter the responsibility of the CMR to complete all Work in accordance with the Contract Documents.

**21.4 Close-Out Requirements**

**21.4.1** Utility Connections. Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

**21.4.2** As-Built Drawings

**21.4.2.1** In addition to its requirement to provide monthly As-Built Drawings to the County, the CMR shall provide a final set of As-Built Drawings, sometimes referred to as "Record Drawings," showing all of the Work as actually constructed upon Completion

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of the Project as indicated in the Specifications.

**21.4.2.2** CMR is liable and responsible for any and all inaccuracies in As-Built Drawings, even if inaccuracies become evident at a future date.

**21.4.2.3** Upon Completion of the Work and as a condition precedent to approval of final payment, CMR shall obtain the Architect’s approval of the corrected prints and employ a competent draftsman to transfer the “as-built” information to the most current version of Autocad that is, at that time, currently utilized for plan check submission by either the County, the Construction Manager and/or the Architect, and submit electronic files. When completed, CMR shall deliver corrected electronic files acceptable to County with Autocad file to the County.

**21.4.2.4** Operations & Maintenance Manuals: CMR shall prepare all operation and maintenance manuals and date as indicated in the Specifications.

**21.4.2.5** Closeout Documentation: CMR shall provide all Closeout Documentation, which shall include the following, without limitation:

21.4.2.5.1 A full set of final As-Built Drawings, as further defined herein.

21.4.2.5.2 All Operations & Maintenance Manuals and information, as further defined herein.

21.4.2.5.3 All Warranties, as further defined herein.

21.4.2.5.4 All required report(s) for all scope(s) of work to ensure acceptance, completion, and approval from all governmental agencies with approval authority over the Project.

**21.5 Final Inspection**

**21.5.1** CMR shall comply with Punch List procedures as provided herein, and maintain the presence of a Project Superintendent and Project Manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall CMR demobilize its forces prior to completion of the Punch List. Upon receipt of CMR’s written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Construction Manager will inspect the Work and shall submit to CMR and County a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual

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circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

**21.5.2** Upon CMR's completion of all items on the Punch List and any other uncompleted portions of the Work, the CMR shall notify the County and Architect, who shall again inspect such Work. If the Architect finds the Work complete and acceptable under the Contract Documents, the Architect will notify CMR, who shall then jointly submit to the Architect and the County its final Application for Payment.

**21.6 Final Inspection Requirements**

Before calling for final inspection, CMR shall determine that the following have been performed:

**21.6.1** The Work has been completed.

**21.6.2** All life-safety items are completed and in working order.

**21.6.3** Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.

**21.6.4** Electrical circuits scheduled in panels and disconnect switches labeled.

**21.6.5** Painting and special finishes complete.

**21.6.6** Doors complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.

**21.6.7** Tops and bottoms of doors sealed.

**21.6.8** Floors waxed and polished as specified.

**21.6.9** Broken glass replaced and glass cleaned.

**21.6.10** Grounds cleared of CMR's equipment, raked clean of debris, and trash removed from Site.

**21.6.11** Work cleaned, free of stains, scratches, and other foreign matter, of damaged and broken material replaced.

**21.6.12** Finished and decorative work shall have marks, dirt, and superfluous labels removed.

**21.6.13** Final cleanup, as provided herein.

**21.7 Costs of Multiple Inspections**

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More than two (2) requests of the County to make a final inspection shall be considered an additional service of County, Architect, and/or Construction Manager, and all subsequent costs will be invoiced to CMR and if funds are available, withheld from remaining payments.

**21.8 Partial Occupancy or Use Prior to Completion**

**21.8.1** County's Rights to Occupancy. The County may occupy or use any completed or partially completed portion of the Work at any stage. Neither the County's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by County shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the CMR or the CMR's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. The County and the CMR shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities shall be resolved pursuant to the Claims and Disputes provisions herein, with the added provision that during the dispute process, the County shall have the right to occupy or use any portion of the Work that it needs or desires to use.

**21.8.2** Inspection Prior to Occupancy or Use. Immediately prior to partial occupancy or use, the County, the CMR, and the Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**21.8.3** No Waiver. Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Work shall not constitute beneficial occupancy or acceptance of the Work not complying with the requirements of the Contract Documents.

**22. FINAL PAYMENT AND RETENTION**

**22.1 Final Payment**

**22.1.1** Upon receipt and approval of a valid and final Application for Payment, the Architect will issue a final Certificate of Payment or similar document indicating Architect's agreement that the Project has reached Completion. The County shall thereupon jointly inspect the Work and either accept the Work as complete or notify the Architect and the CMR in writing of reasons why the Work has not reached Completion to the satisfaction of the County.

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**22.1.2** Upon acceptance of the Work of the CMR as having reached Completion to the satisfaction of the County (that, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the County may record a Notice of Completion with the County Recorder, and the CMR shall, upon receipt of final payment from the County, pay all the amount(s) due to its Subcontractors.

**22.2 Prerequisites for Final Payment**

The following conditions must be fulfilled prior to Final Payment:

**22.2.1** A full and final waiver or release of all stop notices and stop payment notices in connection with the Work shall be submitted by CMR, including a release of stop notice or stop payment notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all stop notice or stop payment notice rights.

**22.2.1.1** A duly completed and executed conditional waiver and release upon final payment compliant with Civil Code section 8136 from the CMR and each subcontractor of any tier and supplier to be paid from the current progress payment;

**22.2.1.2** A duly completed and executed unconditional waiver and release upon final payment compliant with Civil Code section 8138 from the CMR and each subcontractor of any tier and supplier that was paid from the previous progress payment; and

**22.2.1.3** The CMR shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of County required under the Contract Documents.

**22.2.2** Each Subcontractor shall have delivered to the CMR all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

**22.2.3** CMR must have completed all requirements set forth under “Close Out Procedures,” including, without limitation, submission of an approved set of complete “as-built” Record Drawings.

**22.2.4** Architect shall have issued its written approval that final payment can be made.

**22.2.5** The CMR shall have delivered to the County all manuals and materials required by the Contract Documents.

**22.2.6** The CMR shall have completed final clean up as provided herein.

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**22.3 Retention**

**22.3.1** The retention, less any amounts disputed by the County or that the County has the right to withhold pursuant to provisions herein, shall be paid:

**22.3.1.1** After approval of the County by the Architect’s Certificate of Payment;

**22.3.1.2** After the satisfaction of the conditions set forth herein;

**22.3.1.3** Within sixty (60) days after Completion; and

**22.3.1.4** No earlier than thirty-five (35) days of the recording of the Notice of Completion by County, if Notice of Completion is recorded by the County.

**22.3.2** No interest shall be paid on any retention, or on any amounts withheld due to a failure of the CMR to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the County and the CMR pursuant to Public Contract Code section 22300.

**22.4 Substitution of Securities**

The County will permit the substitution of securities in accordance with the provisions of Public Contract Code section 22300.

**23. UNCOVERING OF WORK**

If a portion of the Work is covered without Architect approval or not in compliance with the Contract Documents, it must, if required in writing, including by email, by the County or the Architect, be uncovered for the Architect’s observation and be replaced at the CMR’s expense without change in the GMP or Contract Time.

If a portion of the Work has been covered, which the Architect has not specifically requested to observe prior to its being covered, the County, or the Architect may request to see that Work, and it shall be uncovered by the CMR. If that Work is in accordance with the Contract Documents, costs of uncover and replacement shall, by appropriate Change Order, be charged to the County. If that Work is not in accordance with Contract Documents, the CMR shall pay these costs unless the condition was caused by the County or a separate contractor, in which event the County shall be responsible for payment of such costs to the CMR.

**24. NONCONFORMING WORK, CORRECTION OF WORK AND COUNTY’S RIGHT TO PERFORM WORK**

**24.1 Nonconforming Work**



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**24.1.1** CMR shall promptly remove from Premises all Work identified by County as failing to conform to the Contract Documents whether incorporated or not. CMR shall promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to the County and shall bear the expense of making good all work of other contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to the County or other CMRs caused thereby.

**24.1.2** If CMR does not remove Work that County has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed FORTY-EIGHT (48) hours, County may remove it and may store any material at CMR’s expense. If CMR does not pay expense(s) of that removal within ten (10) days’ time thereafter, County may, upon ten (10) days’ written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the County and/or County may withhold those amounts from payment(s) to CMR.

**24.2 Correction of Work**

**24.2.1** Correction of Rejected Work. Pursuant to the notice provisions herein, the CMR shall promptly correct the Work rejected by the County or the Architect as failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not fabricated, installed, or completed. The CMR shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Architect’s services and expenses made necessary thereby.

**24.2.2** Two (2) Year Warranty Corrections. If, within **two (2) years** after the date of Completion of the Work or a designated portion thereof, or after the date for commencement of warranties established hereunder, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the CMR shall correct it promptly after receipt of written notice from the County to do so. This period of two (2) years shall be extended with respect to portions of the Work first performed after Completion by the period of time between Completion and the actual performance of the Work. This obligation hereunder shall survive acceptance of the Work under the Contract and termination of the Contract. The County shall give such notice promptly after discovery of the condition.

**24.3 County's Right to Perform Work**

**24.3.1** If the CMR should neglect to prosecute the Work properly or fail to perform any provisions of this contract, the County, after forty-eight (48) hours written notice to the CMR, may, without prejudice to any other

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remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the CMR.

**24.3.2** If it is found at any time, before or after Completion of the Work, that CMR has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, County may require at its option:

**24.3.2.1** That all such improper Work be removed, remade or replaced, and all work disturbed by these changes be made good by CMR at no additional cost to the County;

**24.3.2.2** That the County deduct from any amount due CMR the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and Specifications; or

**24.3.2.3** That the County exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the County hiring its own forces or another contractor to replace the CMR's nonconforming Work, in which case the County shall either issue a deductive Change Order, a Construction Change Directive, or invoice the CMR for the cost of that work. CMR shall pay any invoices within thirty (30) days of receipt of same or County may withhold those amounts from payment(s) to CMR.

**25. TERMINATION AND SUSPENSION**

**25.1 County's Right to Terminate CMR for Cause**

**25.1.1** Grounds for Termination. The County, in its sole discretion, may terminate the Contract and/or terminate the CMR's right to perform the work of the Contract based upon the following:

**25.1.1.1** CMR refuses or fails to perform the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or

**25.1.1.2** CMR fails to complete the Work within the time specified or any extension thereof, or

**25.1.1.3** CMR persistently fails or refused to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or

**25.1.1.4** CMR files a petition for relief as a debtor, or a petition is filed against the CMR without its consent, and the petition not

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dismissed within sixty (60) days; or

**25.1.1.5** CMR makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or

**25.1.1.6** CMR persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or

**25.1.1.7** CMR fails to make prompt payment to Subcontractors, or for material, or for labor; or

**25.1.1.8** CMR persistently disregards laws, or ordinances, or instructions of County; or

**25.1.1.9** CMR fails to supply labor, including that of Subcontractors, that can work in harmony with all other elements of labor employed or to be employed on the Work; or

**25.1.1.10** CMR or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract.

**25.1.2** Notification of Termination. Upon the occurrence at County's sole determination of any of the above conditions, County may, without prejudice to any other right or remedy, serve written notice upon CMR and its Surety of County's termination of this Contract and/or the CMR's right to perform the work of the Contract. This notice will contain the reasons for termination. Unless, within three (3) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory to County for the correction of the condition(s) and/or violation(s) be made, this Contract and/or the CMR's right to perform the Work shall cease and terminate. Upon termination, CMR shall not be entitled to receive any further payment until the entire Work is finished.

**25.1.2.1** Upon termination, County may immediately serve written notice of tender upon Surety whereby Surety shall have the right to take over and perform this Contract only if Surety:

25.1.2.1.1 Within three (3) days after service upon it of the notice of tender, gives County written notice of Surety's intention to take over and perform this Contract; and

25.1.2.1.2 Commences performance of this Contract within (three (3) days from date of serving of its notice to County.

**25.1.2.2** If Surety fails to notify County or begin performance as

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indicated herein, County may take over the Work and execute the Work to completion by any method it may deem advisable at the expense of CMR and/or its Surety. CMR and/or its Surety shall be liable to County for any excess cost or other damages the County incurs thereby. Time is of the essence in this Contract. If the County takes over the Work as herein provided, County may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to CMR as may be on the Site of the Work, in bonded storage, or previously paid for.

**25.1.3** Effect of Termination. CMR shall, only if ordered to do so by the County, immediately remove from the Site all or any materials and personal property belonging to CMR that have not been incorporated in the construction of the Work, or which are not in place in the Work. The County retains the right, but not the obligation, to keep and use any materials and personal property belonging to CMR that have not been incorporated in the construction of the Work, or which are not in place in the Work. The CMR and its Surety shall be liable upon the performance bond for all damages caused the County by reason of the CMR's failure to complete the Contract.

**25.1.3.1** In the event that the County shall perform any portion of, or the whole of the Work, pursuant to the provisions of the General Conditions, the County shall not be liable nor account to the CMR in any way for the time within which, or the manner in which, the Work is performed by the County or for any changes the County may make in the Work or for the money expended by the County in satisfying claims and/or suits and/or other obligations in connection with the Work.

**25.1.3.2** In the event that the Contract is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the CMR or any impact or impairment of CMR's bonding capacity.

**25.1.3.3** If the expense to the County to finish the Work exceeds the unpaid GMP, CMR and Surety shall pay difference to County within twenty-one (21) days of County's request.

**25.1.3.4** The County shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the CMR under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the County, no Subcontractor shall have any claim against the County or third party for Work

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performed by Subcontractor or other matters arising prior to termination of the Contract. The County or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the County so elect, the CMR shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the County may require, for the purpose of fully vesting in the County the rights and benefits of it Subcontractor under Subcontracts or other obligations or commitments. All payments due the CMR hereunder shall be subject to a right of offset by the County for expenses and damages suffered by the County as a result of any default, acts, or omissions of the CMR. CMR must include this assignment provision in all of its contracts with its Subcontractors.

**25.1.3.5** The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to County.

**25.2 Termination of CMR for Convenience**

**25.2.1** County in its sole discretion may terminate the Contract upon three (3) days written notice to the CMR. Under a termination for convenience, the County retains the right to all the options available to the County if there is a termination for cause. In case of a termination for convenience, the CMR shall have no claims against the County except for:

**25.2.1.1** The actual cost for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, and

**25.2.1.2** Five percent (5%) of the total cost of work performed as of the date of termination, or five percent (5%) of the value of the Work yet to be performed, whichever is less. This five percent (5%) amount shall be full compensation for all CMR's and its Subcontractor(s)' mobilization and/or demobilization costs and any anticipated loss profits resulting from termination of the CMR for convenience.

**25.3 Emergency Termination of Public Contracts Act of 1949**

**25.3.1** This Contract is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

**25.3.1.1** Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by

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contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

**25.3.1.2** Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

**25.3.1.3** Compensation to the CMR shall be determined at the sole discretion of County on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the County's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted Schedule of Values, that price shall control. The County, at its sole discretion, may adopt the GMP as the reasonable value of the work performed or any portion thereof.

**25.4 Suspension of Work.**

**25.4.1** County may, without cause, order CMR in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as County may determine. When the County resumes the Project, the parties will attempt to negotiate an adjustment in the GMP for increases or decreases in the cost of performance of the Project caused by suspense, delay or interruption. If the parties cannot agree on an adjusted GMP, the County may terminate the Contract as permitted herein. If the County exercises this option, the CMR shall have no claims against the County except for:

**25.4.2** The actual cost for any and all Work and materials completed or delivered onto the Site for which value is received, including the value of any and all Work then in progress and orders actually placed which cannot be canceled up to the date of notice of termination, and

**25.4.2.1** Five percent (5%) of the total cost of work performed as of the date of the County exercises this option, or five percent (5%) of the value of the Work yet to be performed, whichever is less. This five percent (5%) amount shall be full compensation for all CMR's and its Subcontractor(s)' mobilization and/or demobilization costs and any anticipated loss profits

**25.4.3** All work, materials and orders paid for pursuant to this provision shall

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become the property of the County.

**25.5 Scope Reduction.**

In cases of suspension, partial or complete termination, or at the discretion of the County, the County reserves the right to unilaterally approve a deductive Change Order to reduce scope of work or perform work with other forces or its own forces.

**26. CLAIMS AND DISPUTES**

**26.1 Performance during Dispute and Claim Resolution Process.**

The CMR shall diligently proceed with Work on the Project at the same time that Disputes and Claims are addressed under this Article. It is the intent of County to resolve Disputes with the CMR as close to the events giving rise to the Disputes as possible, and to avoid stale or late Claims and the late documenting of Claims. CMR's failure to diligently proceed in accordance with the County's instructions or the Contract terms will be considered a material breach of this Agreement and a waiver of CMR's rights under this Agreement.

**26.2 Waiver.**

If CMR fails to timely submit any written notices required under the terms of the Contract or in this Disputes and Claims section, CMR waives and releases its rights regarding further review of its Dispute or Claim, unless CMR and County mutually agree in writing to other time limits.

**26.3 Intention.**

The Dispute and Claims Resolution Process required herein are intended to provide a concise mechanism for resolving Disputes and Claims as they arise during the Project, while requiring accurate documentation related to contested issues as to those Disputes and Claims that are not contemporaneously resolved.

**26.4 Exclusive Remedy.**

Compliance with the notice provisions of the Contract as well as the claim submission procedures described in this Disputes and Claims section is an express condition precedent to CMR's right to commence litigation, file a claim under the California Government Code, or commence any other legal action. The CMR cannot bring assert or bring any Claim in any Government Code claim or subsequent legal action until that Claim has gone through the Dispute and Claims Resolution Process herein. The County hereby exercises the power conferred upon it by Government Code Sections 930.2 and 930.4 to augment claims presentation procedures and create its own Dispute and Claims Resolution Process as an exclusive remedy as indicated in this Disputes and Claims section.

**26.5 Other Provisions.**

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If portions of the Contract, other than this Disputes and Claims section establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder. Otherwise, the provisions in this Disputes and Claims section shall control the resolution of all Disputes and Claims.

**26.6 Subcontractors.**

CMR is responsible for providing this Disputes and Claims section to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the CMR are informed of the Dispute and Claims resolution process in this Disputes and Claims section. No Claim submitted by any party that fails to follow the provisions of this Disputes and Claims section will be considered. CMR shall indemnify, keep and hold harmless the County and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney’s fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Disputes and Claims section to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the CMR.

**26.7 Dispute and Claim Resolution Process**

**26.7.1 Dispute:** A Dispute is a written demand by CMR or by Subcontractor(s) or others who make a demand or request by and through CMR during performance of the Work for an adjustment of the Contract Time, GMP, interpretation of the Contract Documents, or other relief with respect to the Contract Documents for which CMR has previously provided written notice to the County pursuant to the terms of the Contract which remain unresolved. A PCO may be a Dispute, but the Parties agree that a PCO shall only be a Dispute if:

**26.7.1.1** The County states in writing that it disagrees with the terms of a PCO and directs the CMR to utilize the Dispute Resolution Process, or

**26.7.1.2** The County rejects in whole or in part a PCO and the CMR states in writing that it is utilizing the Dispute Resolution Process for the portion of the PCO that the County rejected.

**26.7.2 Claim:** A Claim is a Dispute that remains unresolved after conclusion of the Dispute Resolution Process identified below. Individual unresolved Disputes may be aggregated into one or more Claim(s).

**26.8 Dispute Resolution Process (Not for Claims)**

**26.8.1 Identifying, Presenting and Documenting a Dispute.** Every Dispute shall be stated with specificity in writing and signed by CMR under penalty of



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perjury and presented to the County within ten (10) calendar days from the date CMR discovers or reasonably should discover, that an act, error or omission of County, its agents or employees, or action, condition or other situation has occurred that may entitle CMR to an adjustment of the GMP and/or Contract Time. CMR shall provide this writing even if CMR has not yet been damaged, delayed, or incurred extra cost when CMR discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Dispute. The writing shall:

- 26.8.1.1.1 Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Dispute;
- 26.8.1.1.2 Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the GMP, milestones and/or Contract Time adjustments; and
- 26.8.1.1.3 Identify in detail line-item costs if the Dispute seeks money.
- 26.8.1.1.4 If the Dispute involves extra work, a detailed cost breakdown of the amounts the CMR is seeking, including actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that those costs have actually been incurred. To the extent costs have not yet been incurred at the time the Dispute is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within seven (7) days of the date the cost reflected in the record is incurred. At the request of County, extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).
- 26.8.1.1.5 If the Dispute involves an error or omission in the Contract Documents:
  - 26.8.1.1.5.1 An affirmative representation under penalty of perjury by CMR and any affected Subcontractors and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and
  - 26.8.1.1.5.2 A detailed statement demonstrating that the error or omission reasonably should not have been discovered, by CMR, its Subcontractors and

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suppliers, prior to submitting a proposal for the Work.

26.8.1.1.6 CMR shall not be entitled to compensation for escalation of materials costs unless CMR demonstrates to the satisfaction of the County that such cost escalation is the result of unusual, unforeseeable market conditions, not the fault of the CMR, and were not reasonably foreseeable at the time of the award of the Contract. CMR shall provide evidence to County of the costs included in the Contract for those materials and that those costs were reasonable at the time and that CMR timely ordered the materials at issue.

**26.8.1.2** The writing shall be accompanied by all documents substantiating CMR’s position regarding the Dispute. A Dispute that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.

**26.8.1.3** CMR acknowledges that its failure, for any reason, to give written notice (with supporting documentation to permit the County's review and evaluation) within the time frame required by the provisions in this Disputes and Claims section, or its actual or constructive knowledge of any instruction, request, Drawings, Specifications, action, condition, omission, default or other situation for which the CMR believes there should an adjustment of the GMP or Contract Time shall be deemed CMR's waiver, release, discharge and relinquishment of any right to assert, request, or demand any entitlement to an adjustment of the Contract Time or the GMP on account of any such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. CMR further acknowledged that strict compliance with the requirements of the provisions in this Disputes and Claims section is an express condition precedent to CMR’s right to arbitrate or litigate a claim. CMR specifically agrees to assert no demands or claims in arbitration or litigation unless there has been strict compliance with the provisions in this Disputes and Claims section.

**26.8.1.4** Architect’s and/or Construction Manager’s (“AE/CM”) Initial Decision. The County’s AE/CM shall issue a written decision regarding the Dispute to the CMR within ten (10) calendar days of receipt of the written Dispute from the CMR.

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**26.9 Meet and Confer**

**26.9.1 Where There Is No Agreement:** If there is no agreement between CMR and the AE/CM on a CMR’s Dispute, then within ten (10) calendar days of the date of the County’s written decision in response to CMR’s Dispute or PCO, CMR shall give written notice of its demand for a meet and confer meeting with County staff. A meet and confer meeting with County staff shall be a condition precedent to CMR seeking any further relief, including a demand for review as indicated below, in connection with the County’s rejection .

**26.9.2 Where There Is No Agreement:** If there is no agreement between CMR and the AE/CM on a CMR’s Dispute, then within ten (10) calendar days of the date of the County’s written decision in response to CMR’s Dispute or PCO, CMR shall give written notice of its demand for a meet and confer meeting with County staff. A meet and confer meeting with County staff shall be a condition precedent to CMR seeking any further relief, including a demand for review as indicated below, in connection with the County’s rejection .

**26.9.3 Where There Is Partial Agreement:** If CMR and the AE/CM partially agree on a CMR’s Dispute but do not reach complete agreement, then the AE/CM shall issue a written decision or prepare a Change Order, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, CMR shall give written notice of its demand for a meet and confer meeting with County staff. A meet and confer meeting with County staff shall be a condition precedent to CMR seeking any further relief, including a demand for review as indicated below, in connection with the County’s rejection.

**26.9.4** County and CMR shall schedule the meet and confer meeting as soon as reasonably possible after CMR’s written notice of its demand for a meet and confer meeting.

**26.10 CMR’s Demand for Review of Dispute**

**26.10.1** CMR shall submit a written demand for review to the the County with copy to the AE/CM, within ten (10) calendar days of the meet and confer meeting. The written demand for review shall include copies of all documentation the CMR intends to rely upon in substantiating CMR’s position regarding the Dispute, including any supplementary documentation the CMR deems appropriate for the County’s consideration.

**26.10.1.1** County’s Written Decision. The County will review the Dispute and issue a written decision to CMR within thirty (30) calendar days from the date the demand for review and supporting documentation are received by the County. The County has the

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option to meet with CMR, or with CMR and any other party, before issuing a decision.

**26.10.1.2** If no decision is issued within thirty (30) days after the demand for review, the County will be deemed to have rejected CMR's Dispute in its entirety, and CMR shall proceed with the Claim Resolution Process below.

**26.10.1.3** If the County's decision completely resolves the Dispute, the County will prepare and process a Change Order, if applicable, or proceed accordingly.

**26.10.1.4** If the County rejects the CMR's Dispute in whole or in part or does not issue a timely written response, and if CMR ever intends to seek relief regarding the unresolved issues of the Dispute, then CMR shall proceed with the Claim Resolution Process below.

**26.10.1.5** CMR's costs incurred in seeking relief for Disputes and Claims are not recoverable from County.

**26.10.2** Claim Resolution Process. If CMR's Dispute has not been resolved during the Dispute Resolution Process, the CMR shall submit within thirty (30) days of the County's written decision, a Claim with the required documentation set forth below for County's consideration.

**26.10.2.1** CMR shall furnish three (3) certified copies of the required Claim documentation. The Claim documentation shall be complete when furnished. The evaluation of CMR's Claim will be based on County records and the Claim document furnished by CMR.

**26.10.2.2** CMR's Claim documentation shall conform to generally accepted accounting principles and shall be in the following format:

26.10.2.2.1 General Introduction

26.10.2.2.2 General Background Discussion

26.10.2.2.3 Index of Issues (listed numerically)

26.10.2.2.4 For each issue, provide the following information and begin each issue on a new page:

26.10.2.2.4.1 Background

26.10.2.2.4.2 Chronology

26.10.2.2.4.3 CMR's position including all reason(s) for County's potential liability

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26.10.2.2.4.4 Supporting documentation of merit or entitlement

26.10.2.2.4.5 Supporting documentation of damages

26.10.2.2.5 All critical path method schedules, both as-planned, monthly updates, schedule revisions, and as-build along with the computer disks of all schedules related to the Claim.

26.10.2.2.6 Productivity exhibits (if appropriate)

26.10.2.2.7 Summary of Damages for each issue

**26.10.2.3** Supporting documentation of merit or entitlement for each issue shall be cited by reference, photocopies, or explanation. Supporting documentation may include, but shall not be limited to the Contract Documents; correspondence; conference notes; shop drawings and submittals; shop drawing logs; survey books; inspection reports; delivery schedules; test reports; daily reports; subcontracts; fragmentary CPM schedules or time impact analyses; photographs; technical reports; requests for information; field instructions; and all other related records necessary to support the CMR's Claim.

**26.10.2.4** Supporting documentation of damages for each issue shall be cited, photocopied, or explained. Supporting documentation may include, but shall not be limited to, any or all documents related to the preparation and submission of the proposal; certified, detailed labor records, including labor distribution reports; material and equipment procurement records; construction equipment ownership costs records or rental records; job cost reports; Subcontractor or vendor files and cost records; service cost records; purchase orders; invoices; Project as-planned and as-built cost records; general ledger records; variance reports; accounting adjustment records; and any other accounting materials necessary to support the CMR's Claim.

**26.10.2.5** CMR shall include in its Claim documents all issue items and information that CMR contends are part of its Claim. Issues not included in the Claim documents shall not be considered.

**26.10.2.6** Each copy of the Claim documentation shall be certified by a responsible officer of the CMR in accordance with the requirements of the Contract Documents.

**26.10.2.7** The County may withhold from a progress payment and/or the final payment an amount not to exceed 150 percent of the

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disputed amount. The County may, but is not obligated to, notify the Surety and request the Surety's assistance in resolving the controversy.

**26.10.2.8** County's Written Decision. The County will render a written decision to the CMR relative to the Claim. The County's written decision shall be final and binding on the party(ies) unless CMR requests mediation pursuant to this subsection.

**26.10.2.9** Mediation. Within thirty (30) days after the County renders its written decision, the CMR may request that the parties submit the Claim to mediation. Absent a request for mediation, the County's written decision is final and binding on the parties.

**26.10.2.10** Litigation. If, after a mediation as indicated above, the parties have not resolved the Claim, the receiving party's decision made pursuant to mediation will be conclusive and binding regarding the Dispute unless the submitting party commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the conclusion of such mediation or one (1) year following the accrual of the cause of action, whichever is later.

**26.10.3** The County shall be entitled to remedy any false claims, as defined in California Government Code section 12650 et seq., made to the County by the CMR or any Subcontractor under the standards set forth in Government Code section 12650 et seq. Any CMR or Subcontractor who submits a false claim shall be liable to the County for three times the amount of damages that the County sustains because of the false claim. A CMR or Subcontractor who submits a false claim shall also be liable to the County for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$11,000 for each false claim.

**26.11 Documentation of Resolution.**

If a Claim is resolved, the County shall determine if that resolution shall be documented in an Agreement and Release of Any and All Claims form or other document, as appropriate.

**26.12 Dispute and Claim Resolution Process – Non-Applicability.**

The procedures and provisions in this Disputes and Claims section shall not apply to:

**26.12.1** County's determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting

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the Work;

**26.12.2** County’s rights and obligations as a public entity, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a contractor from County contracts, the imposition of penalties or forfeitures prescribed by statute or regulation; provided, however, that penalties imposed against a public entity by statutes such as Section 7107 of the Public Contract Code, shall be subject to the mandatory dispute resolution provisions of this Disputes and Claims section and the Contract;

**26.12.3** Personal injury, wrongful death or property damage claims;

**26.12.4** Latent defect or breach of warranty or guarantee to repair;

**26.12.5** Stop notices or stop payment notices; or Any other County rights as set forth herein.

**27. LABOR, WAGE & HOUR, APPRENTICE, AND RELATED PROVISIONS**

**27.1 Wage Rates, Travel, and Subsistence**

**27.1.1** Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Contract are on file at the County’s principal office and copies will be made available to any interested party on request. CMR shall obtain and post a copy of these wage rates at the Project Site.

**27.1.2** Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the County, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

**27.1.3** CMR shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations (“DIR”) (“Director”), regardless of any contractual relationship which may be alleged to exist between CMR or any Subcontractor and such workers.

**27.1.4** CMR shall pay and shall cause to be paid to each worker needed to

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execute the Work on the Project travel and subsistence payments, as such travel and subsistence payments are defined in the applicable Collective Bargaining Agreements filed with the Department of Industrial Relations in accordance with Labor Code section 1773 et seq.

**27.1.5** If during the period this bid is required to remain open, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract is to be performed, such change shall not alter the wage rates in the Notice to CMRs or the Contract subsequently awarded.

**27.1.6** Pursuant to Labor Code section 1775, CMR shall, as a penalty to County, forfeit the statutory amount, (currently not to exceed two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates, as determined by the County and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by CMR or by any Subcontractor under it. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by CMR.

**27.1.6.1** The amount of the penalty shall not be less than forty dollars (\$40) for each calendar day, or portion thereof, unless the failure of CMR was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of CMR.

**27.1.6.2** The amount of the penalty shall not be less than eighty dollars (\$80) for each calendar day or portion thereof, if CMR has been assessed penalties within the previous three (3) years for failing to meet CMR's prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

**27.1.6.3** The amount of the penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, if the Labor Commissioner determines the CMR willfully violated Labor Code section 1775.

**27.1.7** Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and such minimum wage rate shall be retroactive to time of initial employment of such person in such classification.



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**27.1.8** Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by section 3093, and similar purposes.

**27.1.9** CMR shall post at appropriate conspicuous points on the Site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, CMR shall post a sign-in log for all workers and visitors to the Site, a list of all subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

**27.2 Hours of Work**

**27.2.1** As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal days work. The time of service of any worker employed at any time by CMR or by any Subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract shall be limited and restricted by CMR to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of CMR in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

**27.2.2** CMR shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by CMR in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of County and to the Division of Labor Standards Enforcement of the DIR.

**27.2.3** Pursuant to Labor Code section 1813, CMR shall as a penalty to the County forfeit the statutory amount for each worker employed in the execution of this Contract by CMR or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

**27.2.4** Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the County.

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**27.3 Payroll Records**

**27.3.1** County will use the Alameda County Contract Compliance System, including the Elation Systems, Inc. program, to monitor contract and labor compliance. CMR shall use the Compliance System to meet County’s requirements, and shall participate in training as directed by County in order to become and remain competent in the use of the Compliance System.

**27.3.2** Pursuant to the provisions of section 1776 of the Labor Code, notice is hereby given that CMR shall prepare and provide to the County and shall cause each Subcontractor performing any portion of the Work under this Contract to prepare and provide to the County an accurate and certified payroll record (“CPR(s)”), showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CMR and/or each Subcontractor in connection with the Work.

**27.3.3** In addition to any other requirements pursuant to Labor Code sections 1770, et seq., the CPRs enumerated hereunder shall be certified and shall be provided to the County on a weekly basis. The CPRs from the CMR and each Subcontractor for each week shall be provided on or before Wednesday of the week following the week covered by the CPRs. County shall not make any payment to CMR until:

**27.3.3.1** CMR and/or its Subcontractor(s) provide CPRs acceptable to the County, and

**27.3.3.2** The County is given sufficient time to review and/or audit the CPRs to determine their acceptability. Any delay in CMR and/or its Subcontractor(s) providing CPRs to the County in a timely manner will directly delay the County’s review and/or audit of the CPRs and CMR’s payment.

**27.3.4** All CPRs shall be available for inspection at all reasonable hours at the principal office of CMR on the following basis:

**27.3.4.1** A certified copy of an employee’s CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

**27.3.4.2** CPRs shall be made available for inspection or furnished upon request to a representative of County, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

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**27.3.4.3** CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records reimburse the costs of preparation by CMR, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of CMR.

**27.3.5** The form of certification for the CPRs shall be as follows:

I, (Name-Print), the undersigned, am the (Position in business) with the authority to act for and on behalf of (Name of business and/or CMR), certify under penalty of perjury that the records or copies thereof submitted and consisting of (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 of the Labor Code for any work performed by our employees on the Project.

Date:

Signature:

(Section 16401 of Title 8 of the California Code of Regulations)

**27.3.6** Each CMR shall file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.

**27.3.7** Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by County, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of CMR awarded Contract or performing Contract shall not be marked or obliterated.

**27.3.8** CMR shall inform County of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) working days, provide a notice of change of location and address.

**27.3.9** In the event of noncompliance with the requirements of this section, CMR shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects CMR must comply with this

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section. Should noncompliance still be evident after the ten (10) day period, CMR shall, as a penalty to County, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

**27.3.10** It shall be the responsibility of CMR to ensure compliance with the provisions of Labor Code section 1776.

**27.4 Apprentices**

**27.4.1** CMR acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of CMR to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

**27.4.2** Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

**27.4.3** Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.

**27.4.4** Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.

**27.4.5** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, CMR and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the CMR or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

**27.4.6** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, CMR and any Subcontractor may be required

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to make contributions to the apprenticeship program.

**27.4.7** If CMR or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

**27.4.7.1** Be denied the right to bid on any subsequent project for one (1) year from the date of such determination;

**27.4.7.2** Forfeit as a penalty to County the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

**27.4.8** CMR and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

**27.4.9** CMR shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

**27.4.10** CMR shall ensure compliance with all certification requirements for all employees, agents and Subcontractors on the Project including, without limitation, the requirements for electrician certification in Labor Code sections 108, et seq.

**27.5 Non-Discrimination**

**27.5.1** CMR herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, age, or physical handicap in the performance of this Contract and to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246, and all administrative rules and regulations found to be applicable to CMR and Subcontractor.

**27.5.2** Special requirements for Federally Assisted Construction Contracts: During the performance of this Contract, CMR agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28,

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**27.6 Labor First Aid**

CMR shall maintain emergency first aid treatment for CMR’s workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), the California Occupational Safety and Health Act of 1973, and all related regulations, including without limitation section 330 et seq. of Title 8 of the California Code of Regulations.

**28. MISCELLANEOUS**

**28.1 Assignment of Antitrust Actions**

**28.1.1** Section 7103.5(b) of the Public Contract Code states:

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the CMR or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, made and become effective at the time the awarding body tenders final payment to the CMR, without further acknowledgment by the parties.

**28.1.2** Section 4552 of the Government Code states:

In submitting a bid to a public purchasing body, the CMR offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the CMR for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the CMR.

**28.1.3** Section 4553 of the Government Code states:

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred

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in obtaining that portion of the recovery.

**28.1.4** Section 4554 of the Government Code states:

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

**28.1.5** Under this Article, “public purchasing body” is County and “bidder” is CMR.

**28.2 Excise Taxes**

If, under Federal Excise Tax Law, any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such Federal Excise Tax because it is a sale to a State or Local Government for its exclusive use, County, upon request, will execute documents necessary to show (1) that County is a political subdivision of the State for the purposes of such exemption, and (2) that the sale is for the exclusive use of County. No Federal Excise Tax for such materials shall be included in any GMP.

**28.3 Taxes**

GMP is to include any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 of the Revenue and Taxation Code; Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable.

**28.4 Shipments**

All shipments must be F.O.B. destination to Site or sites, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total GMP shall be all inclusive (including sales tax) and no additional costs of any type will be considered.

**28.5 Compliance with Government Reporting Requirements**

If this Contract is subject to federal or other governmental reporting requirements because of federal or other governmental financing in whole or in part for the Project which it is part, or for any other reason, CMR shall comply with those reporting requirements at the request of the County at no additional cost.

**END OF DOCUMENT**

DOCUMENT 00 73 13

**SPECIAL CONDITIONS**

**1. Mitigation Measures**

CMR shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act. (Public Resources Code section 21000 et. seq.)

**2. Substitution for Specified Items**

- 2.1. Requests for substitutions after award of the Contract shall be within **THIRTY-FIVE (35)** days of the date of the award of the Contract.
- 2.2. Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification shall be deemed to be followed by the words “or equal.” CMR may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified.
  - 2.2.1. If the material, process, or article offered by CMR is not, in the opinion of the County, substantially equal or better in every respect to that specified, then CMR shall furnish the material, process, or article specified in the Specifications without any additional compensation or change order.
  - 2.2.2. This provision shall not be applicable with respect to any material, product, thing or service for which County made findings and gave notice in accordance with Public Contract Code section 3400(b); therefore, CMR shall not be entitled to request a substitution with respect to those materials, products or services.
- 2.3. A request for a substitution shall be in writing and shall include:
  - 2.3.1. All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;
  - 2.3.2. Available maintenance, repair or replacement services;
  - 2.3.3. Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;
  - 2.3.4. Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by the County or others under Contract with the County); and



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- 2.3.5. The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.
- 2.4. No substitutions shall be made until approved, in writing, by the County. The burden of proof as to equality of any material, process, or article shall rest with CMR. The CMR warrants that if substitutes are approved:
  - 2.4.1. The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design and the Contract Documents;
  - 2.4.2. CMR provides the same warranties and guarantees for the substitute that would be provided for that specified;
  - 2.4.3. CMR shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in GMP or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by CMR without a change in the GMP or Contract Time;
  - 2.4.4. CMR shall be responsible for any re-design costs occasioned by County's acceptance and/or approval of any substitute; and
  - 2.4.5. CMR shall, in the event that a substitute is less costly than that specified, credit the County with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, CMR agrees to execute a deductive Change Order to reflect that credit.
- 2.5. In the event CMR furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished shall be borne by CMR.
  - 2.5.1. In no event shall the County be liable for any increase in GMP or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute

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**3. Weather Days**

**3.1** Delays due to adverse weather conditions will only be permitted in compliance with the provisions in the General Conditions and only if the number of days of adverse weather exceeds the following parameters and only if CMR can verify that adverse weather caused delays exceeded the following number of days:

January	[15]	July	[0]
February	[12]	August	[0]
March	[10]	September	[1]
April	[6]	October	[4]
May	[3]	November	[7]
June	[1]	December	[15]

**4. Insurance Policy Limits.** All of CMR’s insurance shall be with insurance companies with an A.M. Best rating of no less than A: XI. **[AMOUNTS MUST AGREE WITH MINIMUMS SET BY RISK MANAGEMENT]**

The limits of insurance shall not be less than:

<b>Commercial General Liability</b>	Each Occurrence	[\$2,000,000]
	General Aggregate	[\$2,000,000]
	Product Liability and Completed Operations	[\$1,000,000]
<b>Automobile Liability – Any Auto</b>	Combined Single Limit	[\$2,000,000]
<b>Excess Liability</b>		[\$4,000,000]
<b>Workers Compensation</b>		Statutory limits pursuant to state law
<b>Employers’ Liability</b>		[\$1,000,000]
<b>Builder’s Risk (Course of Construction)</b>		<b>CMR DOES NOT NEED TO CARRY</b>

**5. Permits, Certificates, Licenses, Fees, Approval**

**5.1 Payment for Permits, Certificates, Licenses, and Fees.** As required in the General Conditions, the CMR shall secure and pay for all permits, licenses and

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certificates necessary for the prosecution of the Work with the exception of the following:

- 2.2.1. Water connection fees
- 2.2.2. Sewer connection fees
- 2.2.3. Gas connection fees
- 2.2.4. Electric connection fees

With respect to the above listed items, CMR shall be responsible for securing such items, however, County will be responsible for payment of these charges or fees. CMR shall notify the County of the amount due with respect to such items and to whom the amount is payable. CMR shall provide the County with an invoice and receipt with respect to such charges or fees.

**6. Work Restrictions**

Hours of Work

Access to Site

Phasing

END OF DOCUMENT

DOCUMENT 00 73 56

**HAZARDOUS MATERIALS**  
**PROCEDURES & REQUIREMENTS**

**1. Summary**

This document includes information applicable to hazardous materials and hazard waste abatement.

**2. Notice of Hazardous Waste or Materials Conditions**

- 2.1. CMR shall give notice in writing, including by e-mail, to the County, the Construction Manager, and the Architect promptly, before any of the following conditions are disturbed, and in no event later than twenty-four (24) hours after first observance, of any:
  - 2.1.1. Material that CMR believes may be material that is hazardous waste or hazardous material, as defined in section 25117 or 25260 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;
  - 2.1.2. Other material that may present a substantial danger to persons or property exposed thereto in connection with Work at the site.
- 2.2. CMR's written notice shall indicate whether the hazardous waste or material was shown or indicated in the Contract Documents to be within the scope of Work, and whether the materials were brought to the site by CMR, its Subcontractors, suppliers, or anyone else for whom CMR is responsible. As used in this section the term "hazardous materials" shall include, without limitation, asbestos, lead, mercury, Polychlorinated biphenyl (PCB), petroleum and related hydrocarbons, and radioactive material.
- 2.3. In response to CMR's written notice, the County shall investigate the identified conditions.
- 2.4. If the County determines that conditions do not involve hazardous materials or that no change in terms of Contract is justified, the County shall so notify CMR in writing, stating reasons. If the County and CMR cannot agree on whether conditions justify an adjustment in Contract Price or Contract Times, or on the extent of any adjustment, CMR shall proceed with the Work as directed by the County.

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- 2.5. If after receipt of notice from the County, CMR does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume Work under special conditions, then County may order such portion of Work that is in connection with such hazardous condition or such affected area to be deleted from the Work, or performed by others, or County may invoke its rights to terminate the Contract in whole or in part. County will determine entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of Work, or performing the Work by others.
- 2.6. If CMR stops Work in connection with any hazardous condition and in any area affected thereby, CMR shall immediately redeploy its workers, equipment, and materials, as necessary, to other portions of the Work to minimize delay and disruption.

**3. Additional Warranties and Representations**

- 3.1. CMR represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have the required levels of familiarity with the Site and the Work, training, and ability to comply fully with all applicable law and contract requirements for safe and expeditious performance of the Work, including whatever training is or may be required regarding the activities to be performed (including, but not limited to, all training required to address adequately the actual or potential dangers of Contract performance).
- 3.2. CMR represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have and maintain in good standing any and all certifications and licenses required by applicable federal, state, and other governmental and quasi-governmental requirements applicable to the Work.
- 3.3. CMR represents and warrants that it has studied carefully all requirements of the Specifications regarding procedures for demolition, hazardous waste abatement, or safety practices, specified in the Contract, and prior to submitting its proposal, has either (a) verified to its satisfaction that the specified procedures are adequate and sufficient to achieve the results intended by the Contract Documents, or (b) by way of approved "or equal" request or request for clarification and written Addenda, secured changes to the specified procedures sufficient to achieve the results intended by the Contract Documents. CMR accepts the risk that any specified procedure will result in a completed Project in full compliance with the Contract Documents.

**4. Monitoring and Testing**

- 4.1. County reserves the right, in its sole discretion, to conduct air monitoring, earth monitoring, Work monitoring, and any other tests (in addition to testing required

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under the agreement or applicable law), to monitor Contract requirements of safe and statutorily compliant work methods and (where applicable) safe re-entry level air standards under state and federal law upon completion of the job, and compliance of the work with periodic and final inspection by public and quasi-public entities having jurisdiction.

- 4.2. CMR 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 CMR. In the event County elects to perform these activities and tests, CMR shall afford County ample access to the Site and all areas of the Work as may be necessary for the performance of these activities and tests. CMR will include the potential impact of these activities or tests by County in the Contract Price and the Scheduled Completion Date.
- 4.3. Notwithstanding County's rights granted by this paragraph, CMR may retain its own industrial hygiene consultant at CMR'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 CMR relating to the Work and CMR shall immediately provide that documentation upon request.

**5. Compliance with Laws**

- 5.1. CMR shall perform safe, expeditious, and orderly work in accordance with the best practices and the highest standards in the hazardous waste abatement, removal, and disposal industry, the applicable law, and the Contract Documents, including, but not limited to, all responsibilities relating to the preparation and return of waste shipment records, all requirements of the law, delivering of all requisite notices, and obtaining all necessary governmental and quasi-governmental approvals.
- 5.2. CMR represents that it is familiar with and shall comply with all laws applicable to the Work or completed Work including, but not limited to, all federal, state, and local laws, statutes, standards, rules, regulations, and ordinances applicable to the Work relating to:
  - 5.2.1. The protection of the public health, welfare and environment;
  - 5.2.2. Storage, handling, or use of asbestos, PCB, lead, petroleum based products or other hazardous materials;

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- 5.2.3. The generation, processing, treatment, storage, transport, disposal, destruction, or other management of asbestos, PCB, lead, petroleum, or hazardous waste materials or other waste materials of any kind; and
- 5.2.4. The protection of environmentally sensitive areas such as wetlands and coastal areas.

**6. Disposal**

- 6.1. CMR has the sole responsibility for determining current waste storage, handling, transportation, and disposal regulations for the job Site and for each waste disposal facility. CMR must comply fully 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.
- 6.2. CMR 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 EPA form, so that County may track the volume of waste it put in each landfill and receive from each landfill a certificate of receipt.
- 6.3. CMR 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. CMR shall not use any disposal facility to which County has objected. CMR shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction forwarding the original to the County.

**7. Permits**

- 7.1. Before performing any of the Work, and at such other times as may be required by applicable law, CMR shall deliver all requisite notices and obtain the approval of all governmental and quasi-governmental authorities having jurisdiction over the Work. CMR shall submit evidence satisfactory to County that it and any disposal facility:
  - 7.1.1. Have obtained all required permits, approvals, and the like in a timely manner both prior to commencement of the Work and thereafter as and when required by applicable law, and
  - 7.1.2. Are in compliance with all such permits, approvals and the regulations.

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For example, before commencing any work in connection with the Work involving asbestos-containing materials, or PCBs, or other hazardous materials subject to regulation, CMR agrees to provide the required notice of intent to renovate or demolish to the appropriate state or federal agency having jurisdiction, by certified mail, return receipt requested, or by some other method of transmittal for which a return receipt is obtained, and to send a copy of that notice to County. CMR shall not conduct any Work involving asbestos-containing materials or PCBs unless CMR has first confirmed that the appropriate agency having jurisdiction is in receipt of the required notification. All permits, licenses, and bonds that are required by governmental or quasi-governmental authorities, and all fees, deposits, tap fees, offsite easements, and asbestos and PCB disposal facilities expenses necessary for the prosecution of the Work, shall be procured and paid for by CMR. CMR shall give all notices and comply with the all applicable laws bearing on the conduct of the Work as drawn and specified. If CMR observes or reasonably should have observed that Plans and Specifications and other Contract Documents are at variance therewith, it shall be responsible for promptly notifying County in writing, including by e-mail, of such fact. If CMR performs any Work contrary to applicable laws, it shall bear all costs arising therefrom.

- 7.2. In the case of any permits or notices held in County's name or of necessity to be made in County's name, County shall cooperate with CMR in securing the permit or giving the notice, but the CMR shall prepare for County review and execution upon approval, all necessary applications, notices, and other materials.

**8. Indemnification**

- 8.1. To the extent permitted by law, the indemnities and limitations of liability expressed throughout the Contract Documents apply with equal force and effect to any claims or liabilities imposed or existing by virtue of the removal, abatement, and disposal of hazardous waste. This includes, but is not limited to, liabilities connected to the selection and use of a waste disposal facility, personal injury, property damage, loss of use of property, damage to the environment or natural resources, or “disposal” and “release” of materials associated with the Work (as defined in 42 U.S.C. § 9601 et seq.).

**9. Termination**

- 9.1. County shall have an absolute right to terminate for default immediately without notice and without an opportunity to cure should CMR knowingly or recklessly commit a material breach of the terms of the Contract Documents, or any applicable law, on any matter involving the exposure of persons or property to hazardous waste. However, if the breach of contract exposing persons or property to hazardous waste is due solely to an ordinary, unintentional, and non-reckless



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failure to exercise reasonable care, then the procedures for termination for cause shall apply without modification.

END OF DOCUMENT

DOCUMENT 00 73 49

**PROJECT STABILIZATION/COMMUNITY BENEFIT AGREEMENT**  
**of the**  
**COUNTY OF ALAMEDA**  
**and**  
**California Prevailing Wage**  
**Requirements**

**6. Summary**

6.1. to Labor, Wage & Hour, Apprentice, and related provisions described in Document 00 72 13 Paragraph 26; the Work performed pursuant to this Contract is subject to the requirements of the "PROJECT STABILIZATION/COMMUNITY BENEFITS AGREEMENT for the COUNTY OF ALAMEDA" ("PSCBA"). The Contractor agrees to be party to and bound by the "PROJECT STABILIZATION/COMMUNITY BENEFITS AGREEMENT for the COUNTY OF ALAMEDA". Contractor agrees to execute the "PROJECT STABILIZATION/COMMUNITY BENEFITS AGREEMENT for the COUNTY OF ALAMEDA Letter of Assent" and shall require all of its subcontractors, of whatever tier, to become similarly bound for all work within the scope of this Contract by signing an identical Letter of Assent.

**7. PROJECT STABILIZATION/COMMUNITY BENEFIT AGREEMENT Of the COUNTY OF ALAMEDA**

7.1. The PROJECT STABILIZATION/COMMUNITY BENEFITS AGREEMENT for the COUNTY OF ALAMEDA (PSCBA) is included for reference only in PROJECT STABILIZATION/COMMUNITY BENEFITS AGREEMENT for the COUNTY OF ALAMEDA Document 00 73 49B.

**7.1.1. ROLES AND RESPONSIBILITIES SUBCONTRACTS**

7.1.1.1. Each Contractor, which includes all subcontractors of any tier, including trucking entities performing Covered Work of this Contract, agrees that neither it nor any of its subcontractors will subcontract any Work of this Contract except to a person, firm, or corporation who is or becomes party to the PSCBA by signing the Letter of Assent attached to the PSCBA as Exhibit "A". All Contractors performing Covered Work of this Contract shall, as a condition to performing Work of this Contract, become Signatory to and perform all work under the terms of the PSCBA.

7.1.1.2. Each Contractor, which includes all subcontractors of any tier performing Work of this Contract, shall give written notice to the Union(s) of any subcontract involving the performance of work covered by the PSCBA

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within either five (5) business days of executing a contract with such subcontract or before the subcontractor commences work on the Project, whichever occurs first. Such notice shall specify the name and address of the subcontractor, the California State License Board license number of the Contractors and scope of work to be performed. Written notice at a Pre-Job Conference shall be deemed written notice under this provision only for those subcontractors listed at the Pre-Job Conference

- 7.1.1.3. The Contractor shall be responsible for PSCBA compliance by all subcontractor and lower tier subcontractor.

**7.1.2.WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES**

- 7.1.2.1. The assignment of the Work to subcontractors is solely the responsibility of the Contractor.
- 7.1.2.2. Each Contractor shall conduct a Pre-Job Conference with the Building and Construction Trades Council of Alameda County (Council) prior to commencing Work as specified in Paragraph 2.1.3 of this Document 00 73 49. The Contractor will notify the County in advance of all such conferences.
- 7.1.2.3. Any jurisdictional disputes regarding the assignment of the Work of this Contract will be resolved per the requirements of the PSCBA.

**7.1.3. PRE-JOB CONFERENCE**

- 7.1.3.1. A mandatory Pre-Job Conference and/or Mark-Up Meeting will be held prior to the commencement of work to establish the scope of work in each Contractor and Subcontractor contract. All meeting shall be held at the offices of the Alameda County Building and Construction Trades Council.
- 7.1.3.2. The Contractor performing the work shall have the responsibility for making work assignments in accordance with the PSCBA, and will be required to bring relevant plans, specifications, and blueprints to the meeting, as requested by the Union
- 7.1.3.3. Contractor must submit written workforce projections at the Pre-Job Conference. The workforce projections shall include projected man-hours on a craft-by-craft basis, consistent with the Contractor’s bid proposal.
- 7.1.3.4. The County will schedule and attend all Pre-Job and Mark-Up Meetings and participate in discussions as they pertain to the terms and conditions of the PSCBA.

**7.1.4.JOINT ADMINISTRATIVE COMMITTEE MEETINGS**

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- 7.1.4.1. The Joint Administrative Committee (JAC) has been established to monitor compliance with the PSCBA. The JAC meets monthly and reviews monthly reporting by the Contractor.
- 7.1.4.2. The Contractors shall provide progress report as described in Paragraph 2.1.8 of this Document.

7.1.5.COORDINATOR

- 7.1.5.1. The County will designate a Coordinator, who will be responsible for the administration and application of the PSCBA.

7.1.6.LOCAL HIRING PROGRAM

- 7.1.6.1. The Contractor agrees to achieve the inclusion of Residents as defined in the PSCBA in the employment and apprenticeship opportunities created by the Work of this Contract, which will be known as the Local Hiring Program (LHP) as described in the PSCBA.
- 7.1.6.2. The Contractor agrees to a goal that Residents of the County will perform forty percent (40%) of all hours worked on the Work of this Contract, on a craft-by-craft basis, if such workers are available, capable and willing to work on the projects, together with the apprentice goals described in Paragraph 2.1.7 of this Document.
- 7.1.6.3. The Contractors and subcontractors shall make good faith efforts to reach these goals, as described in the PSCBA including but not limited to the following:
  - 7.1.6.3.1. Within one week of the issuance of the Notice to Proceed, the Contractors shall meet with the County to review and approve its compliance plan for reaching the Local Hiring Goals, using the required compliance plan form provided by the County.
  - 7.1.6.3.2. Submit copies of hiring hall dispatch requests and responses to the County within ten (10) days of County's request at any point during the execution of the Work of this Contract.
  - 7.1.6.3.3. Immediately contact the County if a union hiring hall dispatcher will not or cannot, upon request of the Contractor, dispatch local residents.
  - 7.1.6.3.4. Use the "Name Call," "Rehire" or other available hiring hall procedures to reach goals and shall provide documentation of such requests to the County upon request.

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- 7.1.6.3.5. Use community based organizations as a resource for local labor resources, if a union will not or cannot provide local Residents as requested
- 7.1.6.3.6. Sponsor local Residents for apprenticeship, when possible.
- 7.1.6.3.7. Maintain records for each Resident of Alameda County who was referred but not hired along with an explanation why the worker was not hired.
- 7.1.6.3.8. Document participation in any local employment training programs and submit documentation of such to the County within ten (10) days if requested by County.
- 7.1.6.3.9. To the extent possible, the parties agree to implement the Local Hiring Program while complying with the County’s Local Vendor Preference and Enhanced Construction Outreach (ECOP) programs for the work of this Contract. To the extent that the County determines, in its sole discretion, that there is a conflict between the Local Hiring Program established in the PSCBA and the County’s SLEB, ECOP, and/or Local Vendor Preference Programs, the conflict shall be resolved in favor of the Local Hiring Program of the PSCBA.
- 7.1.6.3.10. For the purpose of reaching the goal established in Paragraph 2.1.6.2 of this Document, a Contractor may qualify for full credit toward the goal by employing Alameda County Residents for other work the Contractor is performing in any of the nine Bay Area counties of: Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara, Marin, Solano, Napa and Sonoma as outlined in the PSCBA.

**7.1.7. APPRENTICES**

- 7.1.7.1. Although the PSCBA states that the County shall make available to the Unions a database of apprentices qualifying under the local hiring provision of the PSCBA, the County has not developed this database. Contractor is to contact the Unions for available apprentices.
  - 7.1.7.1.1. For each Covered Project, the Contractors will be responsible to ensure that it and/or its subcontractors hire at least one (1) new apprentice for the first \$1 million of construction value and for each succeeding \$5 million of construction contract value, the Contractors and/or their subcontractors will be required to hire at least one (1) additional new apprentice. All such apprentices may be graduates of pre apprenticeship programs with known and successful track record of apprentice placement into jobs. All the pre apprenticeship program graduates must be Residents of Alameda County and members of a Disadvantaged Population, as described in the PSCBA.

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- 7.1.7.2. Contractors shall exercise their best efforts to recruit apprenticeship program applicants from Residents and who are members of a Disadvantaged Population as described in the PSCBA
- 7.1.7.3. The Contractor shall request dispatch of apprentices in writing from the local Unions and/or Joint Apprenticeship Training Committee in which the Contractor participates. Copies of the written requests shall be provided to the County within ten (10) days of request by the Coordinator.
- 7.1.7.4. For the purposes of meeting the goal established in Paragraph 2.1.6.1 of this Document, a Contractor may qualify for full credit toward the goal by employing Alameda County Residents as apprentices for other work the Contractor is performing in any of the nine Bay Area counties of: Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara, Marin, Solano, Napa and Sonoma as described in the PSCBA

7.1.8. DATA COLLECTION AND REPORTING

- 7.1.8.1. This Paragraph describes Contractor and data collection, reporting guidelines and responsibilities for the PSCBA.
- 7.1.8.2. On a monthly basis, Contractors must submit reports to the County on the status and progress of local hiring on a craft-by-craft basis, including utilization of apprentices as described in Document 00 73 49A “PSCBA Forms”.

7.1.9. HELMETS TO HARDHATS: VETERAN EMPLOYMENT

- 7.1.9.1. The Contractor agrees to utilize the series of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter “Center”) and Center’s “Helmets to Hardhats” program to serve as a resources for preliminary orientations, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as described in the PSCBA.
- 7.1.9.2. The Contractors may also utilize the services of the “Swords to Ploughshares” program.

8. **California Labor Code:** In addition to complying with the PSCBA, Contractor shall also comply with the California Labor Code prevailing wage requirements.

- 8.1. Pursuant to Labor Code Section 1770, *et seq.*, the Contractor shall pay to persons performing labor in and about the Work provided for in the Contract an amount equal to or more than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages

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for legal holiday and overtime work in said locality, which per diem wages shall be equal to or more than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract. The Contractor shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each Site.

- 8.2. The Contractor shall forfeit, as a penalty to the County, fifty dollars (\$50.00) 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 3.2 and the terms of the Labor Code shall be withheld and retained from payments due or to become due to the Contractor under this Contract and the terms of the Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by the County. The final amount of forfeiture shall be determined by the Labor Commissioner pursuant to Labor Code § 1775.
- 8.3. The Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of work or labor on the Work provided for in the Contract Documents, a provision that the Subcontractor 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.
- 8.4. The Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code § 1813.

9. **Project Stabilization/Community Benefits Agreement/ Labor Compliance Program Monitoring.**

- 9.1. The County has elected to retain the services of a third party to monitor compliance with the PSCBA and California Labor Code Requirement.
- 9.2. The PSCBA/Labor Compliance Program (“PSCBA/LCP”) will enforce PSCBA, prevailing wage, apprentice employment and local hiring requirements consistent with California Labor Code and the PSCBA. PSCBA/LCP services do not limit the scope of Work and do not relieve the Contractor of any responsibility for coordination of the Work with California Labor Code or the PSCBA.
- 9.3. The Contractor shall be responsible for any costs that the County incurs as the result of any actions taken by DIR, or by the County when exercising its enforcement duties, to address Contractor and/or Subcontractor violations related to California Labor Code or the PSCBA. If the Contractor or any of its Subcontractor are notified that they should take certain actions

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to be in compliance with the PSCBA or applicable state law and those actions are not taken or not taken in a timely manner, then the County shall have the right to recover the cost of all work performed by or for the County or its contractors from the date of such notice and the County shall have the right to back charge the Contractor for any and all costs associated with such work. payroll reports for the duration of the Project shall be maintained by the Contractor and submitted electronically, and are subject to all of the following conditions:

- 9.3.1. Certified Payroll Reports (CPR) shall be submitted to the County electronically on the web-based software system, described in Document 00 45 46.01 “Prevailing Wage and Related Labor Requirements Certification”, to be utilized for collection and verification of payroll reports for the Project.
- 9.3.2. CPR must contain all of information required by California Labor Code section 1776 and must be organized in a manner that is similar or identical to the format in which the information is reported on the DIR “Public Works Payroll Reporting Form” (Form A-1-131);
- 9.3.3. Statement of Compliance. CPR shall be accompanied by a signed “Statement of Compliance” certifying that the payroll reports are correct and complete and that each laborer or mechanic has been paid not less than the proper prevailing wage rate for the work performed. The wording of the certification shall comply with California Labor Code section 1776 and 29 C.F.R. § 5.5(a)(3)(ii)(B)-(D).
- 9.3.4. Electronic CPR submitted to the County, the DIR Division of Labor Standards Enforcement (DLSE), or other entity within the DIR, must be in the form of a non-modifiable image or record that bears an electronic signature or includes a copy of any original certification made on paper. Printed reports submitted on paper with an original signature will be accepted as supplemental information to electronic reports, and will not relieve the Contractor or its Subcontractor from their obligation to submit electronic reports.
- 9.3.5. Apprenticeship Program. Reference is made to General Conditions Document 00 72 13, Paragraph 26 and the PSCBA for the Contractor and its Subcontractors obligation to comply, and be responsible for ensuring compliance, with the requirements of the California Labor Code provisions concerning the employment of apprentices, including Labor Code sections 1776, 1777.5, and 1777.6.

**END OF DOCUMENT**



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DOCUMENT 00 73 73.01

**PUBLIC ART PROGRAM**

**PART 1 - GENERAL**

1.01 SUMMARY

- A. Document Includes:
  - 1. This Document describes requirements for the furnishing and installation of artwork which has been designated for the Project and required by Alameda County's Public Art Program as identified in County Ordinance 94-16.
  - 2. County Project Manager shall represent the County and the Alameda County Arts Commission (ACAC).
  
- B. Related Sections:
  - 1. Section 01 32 16 – Progress Schedules
  - 2. Section 01 33 00 – Submittal Procedures
  - 3. Section 01 43 39 – Mock-Ups
  - 4. Section 05 12 13 – Architecturally Exposed Structural Steel Framing
  - 5. Section 05 50 00 – Metal Fabrications
  - 6. Section 08 81 00 – Glass Glazing

1.02 DEFINITIONS

- A. General: The artwork has been defined as an item which is Owner-Designed / Contractor-Furnished and Installed (OD/CF/CI).
  
- B. OD/CF/CI:
  - 1. Extent of actual design will be produced by Owner and delivered to Contractor for fabrication and installation as part of the Work. Requirements for area of work shall be as specified and shown on the Drawings.
  - 2. The Design Team, together with the Contractor and ACAC will work to develop the basic design parameters for the Cut Metal.
  - 3. The Architect, in coordination with the County Project Manager will be responsible for reviewing and approving Contractor shop drawings and prepared samples.
  - 4. Contractor shall be responsible for fabricating samples and the item according to the approved submittals, delivering and installing the item, the coordinated preparation of the site as required for the complete installation of the item as specified.
  - 5. All scheduling issues for ACAC-related components shall be highlighted in the schedule and coordinated with the County Project Manager.
  
- C. Arts Commission: The Alameda County Arts Commission (ACAC) is a division of the County of Alameda. This division is responsible for the administration of the County's Public Art Program, will oversee a design contract with the artist for this Project, and work directly through the County's Project Manager.

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### 1.03 ARTWORK ITEMS

- A. Artwork Design
  - 1. Responsibility: County.
  - 2. Description: The design for the artwork will be supplied as a digital file appropriate for use by the fabricator.
  - 3. The design for the artwork will be developed and approved through the County's public art process.
  
- B. Cut Metal Architectural Canopy
  - 1. Responsibility: Contractor
  - 2. Description: The artwork design will be fabricated as waterjet cut anodized aluminum plates as specified in Section 05 50 00 and in this Document.
  - 3. It will be the responsibility of the Contractor to coordinate the Owner-provided digital files to the appropriate subcontractor, directly through the County Project Manager who will coordinate with ACAC, as specified.
  - 4. The Architectural Canopy is addressed on Sheet A7.41.

### 1.04 QUALITY ASSURANCE

- A. Contractor shall not perform any work directly related to the Public Art Program prior to meeting with the County's Project Manager.
- B. Qualifications for Cut Metal Architectural Canopy Manufacturer
  - 1. A firm with demonstrable experience (a minimum of 3 projects) producing waterjet cut metal showing a similar level of complexity to this Project and with a record of successful in-service performance, as well as sufficient production capacity to produce required units.
- C. Qualifications for Cut Metal Architectural Canopy Installer, see Section 05 50 00.

### 1.05 SUBMITTALS

- A. Refer to Section 01 33 00. County Project Manager will coordinate ACAC review.
- B. Shop drawings :
  - 1. Shop drawings are needed in order for the County to finalize the image design of the Cut Metal Architectural Canopy.
- C. Samples for Cut Metal Architectural Canopy
  - 1. Provided by the Cut Metal Architectural Canopy Manufacturer: 2, 24-inch x 24-inch samples representing 2 distinct areas of the design identified by the ACAC, through the County Project Manager.
- D. Additional Submittals: Submit to the County Project Manager three (3) additional copies of all submittals and communications concerning coordination, fabrication, delivery, installation and protection of the Cut Metal Architectural Canopy and associated assemblies. Submit three (3) additional copies of all shop drawings, product data, and samples which impact Cut Metal Architectural Canopy specified herein.

### 1.06 PUBLIC ART PROGRAM INDIVIDUALS

- A. ACAC Director and Public Art Manager:  
Rachel Osajima, Tel: 510-271-5162, Email: [rachel.osajima@acgov.org](mailto:rachel.osajima@acgov.org)

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- B. ACAC Public Art Program Coordinator:  
Amy Stimmel, Tel: 510-891-5706, Email: [amy.stimmel@acgov.org](mailto:amy.stimmel@acgov.org)

### PART 2 - PRODUCTS

#### 2.01. MATERIALS

- A. Cut Metal Architectural Canopy: Refer to Section 05 50 00. Description: Water-jet cut aluminum
1. Thickness: +/- 1/2-inch plates
  2. Size: As shown on the Drawings
  3. Finish: Anodized finish with wear expectation of 20 years
  4. Color(s): As selected by the Architect in coordination with the County Project Manager
  5. Layout: As indicated on the Drawings and in accordance with Document 00 73 73.01
- B. The Design Team, together with the Contractor and ACAC will work to develop the basic design parameters for the Cut Metal. This effort will confirm all design assumptions that impact the overall final performance of Architectural Canopy. The final design for the artwork will be based on the design parameters that were collectively established.

### PART 3 - EXECUTION

#### 3.01 SCHEDULE

- A. Arts Coordination Kick-Off Meeting: The purpose of the meeting is to coordinate the activities and define roles of all the participants, and to develop the basic design parameters for the Cut Metal.
- B. Owner to produce memo documenting the basic design parameters for GC approval.
- C. A Pre-Construction Meeting will be held prior to start of both the Cut Metal Architectural Canopy fabrication and installation which would include the Contractor, the County's Project Manager, a representative from the ACAC, installer, and the relevant subcontractors. The County Project Manager will preside and issue the agenda.
- D. Identify OD/CF/CI items on the progress schedule.
- E. Artwork Design (digital file) will be delivered to Contractor by ACAC, through the County Project Manager.
- F. Contractor to coordinate sampling and review with the County Project Manager. County Project Manager will coordinate ACAC review. The sample approval process shall be extended beyond typical review period to accommodate review by several agencies; no more than one month past typical.
- G. Contractor to coordinate scheduling and delivery of all components to Site.
- H. Contractor to coordinate site visits by the County Project Manager: at the initiation of installation; at 2-4 incremental points during installation to be confirmed with Contractor

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and County Project Manager prior to start; and following installation.

3.02 DELIVERY, STORAGE, HANDLING, AND PROTECTION

A. Refer to Section 05 50 00.

3.03 INSTALLATION BY CONTRACTOR

A. Refer to Section 05 50 00.

B. Do not begin installation of Cut Metal Architectural Canopy until the County's Project Manager has reviewed and approved conditions.

3.04 CLEANING AND PROTECTION

A. Refer to Section 05 50 00.

B. Damage to Cut Metal Architectural Canopy as determined by the County Project Manager will be repaired or replaced by Contractor. The cost of such repair or replacement work shall be the responsibility of the Contractor, at no additional cost to County.

END OF DOCUMENT